

**Supply and Delivery of
BENDIX
REMANUFACTURED
AIR BRAKE PARTS**

**ITB 03-048 PR
CONTRACT 242936**

July 2003

This Contract will be funded in part by the Federal Transit Administration (FTA).
Neither FTA nor the Federal Government are party to any sub-agreement nor to
any solicitations or requests for proposals.



King County

CONTRACT

THIS CONTRACT, made this _____ Day of _____, 2003 by and between King County, Washington, (hereinafter "County") and _____ (hereinafter "Contractor").

WITNESSETH:

WHEREAS, the County has caused Contract documents for:

Contract No: **242936**

Contract Title: **Supply and Delivery of BENDIX REMANUFACTURED AIR BRAKE PARTS**

to be prepared for certain Work as described therein; and

WHEREAS, the Contractor has assured the County that it has the specialized expertise and experience necessary to properly Provide the goods or services in a timely manner and that its Bid includes all of the functions and features required to Provide the goods or services; and

WHEREAS, the County has accepted the Contractor's offer to Provide the goods or services in accordance with the Contract's terms and Specifications;

WHEREAS, by executing this Contract, the Contractor represents that the waiver of the Contractor's immunity under industrial insurance, Title 51 RCW, as set forth in the Contract Documents was mutually negotiated by the parties;

NOW THEREFORE, in consideration of the mutual covenants and agreements of the parties herein contained and to be performed, the Contractor hereby agrees to supply the goods or services at the price and on the terms and conditions herein contained, and to assume and perform all of the covenants and conditions herein required of the Contractor, and the County agrees to pay the Contractor the Contract price provided herein for the supply of the goods or services and the performance of the covenants set forth herein.

THE FURTHER TERMS, CONDITIONS AND COVENANTS of the Contract are set forth in the following exhibit parts each of which is attached hereto and by this reference made a part hereof in the following order of precedence: **[1]** Change Orders; **[2]** Addenda to Invitation For Bid; **[3]** Invitation for Bid document which includes: Terms and Conditions, Technical Specifications, Federal Transit Administration (FTA) Requirements, and Attachments: B) Bid Submittal Form, D) Personnel Inventory Report, E) Affidavit and Certificate of Compliance Regarding Equal Employment Opportunity, H) Buy America, I) Certificate of Lobbying Activities, J) Disclosure Form to Report Lobbying and Instructions, K) Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions, L) Certification Regarding Debarment, Suspension and Other Ineligibility and Voluntary Exclusion - Lower-Tier Covered Transactions, Insurance, **[4]** and the Contractor's Bid.

COMPANY NAME: _____

ACCEPTED BY:

KING COUNTY APPROVED BY:

Authorized signature

Authorized Signature

Name and Title (Print or Type)

Name and Title (Print or Type)

DATE ACCEPTED: _____

DATE APPROVED: _____

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ATTACHMENTS:

- | | | |
|----|--|----------|
| A. | No Bid Response Form | |
| B. | Bid Submittal Form | |
| C. | | Not used |
| D. | Personnel Inventory Report | |
| E. | Affidavit and Certificate of Compliance Regarding Equal Employment Opportunity | |
| F. | | Not used |
| G. | | Not used |
| H. | Buy America Certificate | |
| I. | Certificate of Lobbying Activities | |
| J. | Disclosure Form to Report Lobbying and Instructions | |
| K. | Certification Regarding Debarment, Suspension and Other Responsibility Matters -
Primary Covered Transactions | |
| L. | Certification Regarding Debarment, Suspension and Other Ineligibility and Voluntary
Exclusion - Lower-Tier Covered Transactions | |

ENCLOSURE:

Bid Opening Label

DEFINITION OF WORDS AND TERMS

Words and terms shall be given their ordinary and usual meanings. Where used in the Contract documents, the following words and terms shall have the meanings indicated. The meanings shall be applicable to the singular, plural, masculine, feminine and neuter of the words and terms.

Acceptance: Formal action of the County in determining that the Contractor's Work has been completed in accordance with the Contract.

Act of Nature: A cataclysmic phenomenon of nature, such as an earthquake, flood or cyclone.

Addenda: Written additions, deletions, clarification, interpretations, modifications or corrections to the Contract documents issued by the County during the Bid period and prior to the date and time established for submittal of Bids.

Bidder: The firm presenting an offer to the County in response to an Invitation To Bid.

BPO: Blanket Purchase Order (BPO). A Contract for goods and/or services that establishes terms and conditions, prices and support requirements, but is not an order. Purchase orders will be issued for specific goods/services at established prices for delivery under the terms of the referenced BPO.

Buyer: Individual designated by King County to conduct the Contract solicitation process, draft and negotiate Contracts, resolve Contractual issues and support the Project Manager during Contract performance.

Change Order: Written order issued by the County, with or without notice to sureties, making changes in the Work within the scope of this Contract.

Contract or Contract Documents: The writings and drawings embodying the legally binding obligations between the County and the Contractor for completion of the services or Work under the Contract as set forth on page i of this document..

Contract Administrator: The individual designated by the County to administer the Contract and be the Contractor's primary point of contact. The Contract administrator will approve orders, receipts, invoices and document the Contractor's performance. This Person may be the Project Manager.

Contract Price: Amount payable to the Contractor under the terms and conditions of the Contract for the satisfactory performance of the services under the Contract.

Contract Period: The period of time during which the Contractor shall perform the services or Work under the Contract.

Contract Time: Number of calendar days and/or the intermediate and final completion dates stated in the Contract documents for the completion of the Work specified herein.

Contractor: The individual, association, partnership, firm, company, corporation, or combination thereof, including joint ventures, Contracting with the County for the performance of services or Work under the Contract.

Contractor's Representative: The individual designated in writing by the Contractor to act on its behalf under this Contract.

Cost Analysis: Cost analysis means the review and evaluation of the separate cost elements and proposed profit of the Bidder's cost or pricing data. Cost analysis is the application of judgment utilizing criteria to project from the data to the estimated costs in order to form an opinion on the degree to which the proposed costs represent what the Contract should cost, assuming reasonable economy and efficiency.

Day: Calendar Day.

Executive: King County Executive

ITB: Invitation To Bid, the solicitation document presenting the terms and conditions that will become the Contract when the County accepts a bid.

KCC: King County Code.

Person: Includes individuals, associations, firms, companies, corporations, partnerships, and joint ventures.

Price Analysis: Price analysis means the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit.

Project Manager: The individual designated by the County to manage the project. This Contract may be part of a larger County project.

Proposed Work Change (PWC): A written document issued by the Project Manager, or his/her designee, to the Contractor identifying contemplated changes in the Work and requesting a price estimate from the Contractor; such a document shall not be interpreted or construed to constitute a Change Order.

Provide: Furnish without additional charge.

RCW: The Revised Code of Washington.

Reference Documents: Reports, Specifications, and drawings which are available to Bidders for information and reference in preparing Bids but not as part of this Contract.

Specifications or Technical Specifications: A Section of the solicitation consisting of written descriptions of services to be performed or of the technical requirements to be fulfilled under this Contract.

Subcontractor: The individual, association, partnership, firm, company, corporation, or joint venture entering into an agreement with the Contractor to perform any portion of the Work covered by this Contract.

Submittals: Information which is submitted to the Project Manager in accordance with the technical Specifications.

Subsection: For reference or citation purposes, Subsection shall refer to the paragraph, or paragraphs, called out by part, section and alphanumeric designator.

Work: Everything to be done and provided for the fulfillment of the Contract.

SECTION 1 - INSTRUCTIONS TO BIDDERS

1-1 Introduction

The purpose of this Invitation to Bid (ITB) is to establish one or more blanket contract(s) to provide the County with Bendix Remanufactured Air Brake Parts, on an as-needed basis, for maintenance of the County's bus fleet. Because of the difficulty in determining both exact quantities and parts which may be required by the County during the Contract, the entire Bendix Air Brake price list for Remanufactured parts is placed under Contract. The County may award more than one contract for the supply and delivery of Bendix Remanufactured Air Brake Parts.

Bidders shall read these documents carefully as a failure to comply may be cause for the bid to be rejected.

1-2 Purpose of Bid

This Invitation to Bid will result in a Contract agreement for an indefinite quantities Contract. By signing this Contract, King County does not guarantee that the Contractor will receive any orders for the goods or services. In addition, King County is not giving the Contractor the exclusive right and legal obligation to fill all of the County's needs for the goods and services described in this Contract. King County reserves the right to Contract with any other entity for the goods or services described herein.

1-3 Time and Place for Submission and Opening of Bids

Sealed Bids shall be submitted by **September 11, 2003 at 2:00 p.m.** PST to the King County Procurement & Contract Services Section, Mailstop EXC-FI-0871, Exchange Building, Eighth Floor, 821 Second Avenue, Seattle, Washington, 98104-1598, for the goods and/or services described herein. The sealed Bid must be received by the County's Procurement and Contract Services Section no later than the time and date specified for consideration. The Bidder accepts all risks of late delivery of mailed Bids or of misdelivery regardless of fault. Bids properly and timely submitted will be publicly opened.

If a document holder chooses not to submit a Bid, the document holder is requested to complete and return the "No Bid Response Form" included in this ITB as Attachment A by the date and time indicated above.

1-4 Postponement or Cancellation of Bid Opening

The County reserves the right to cancel the ITB or change the date and time for submitting Bids by announcing same at any time prior to the date and time established for Bid submittal in this ITB.

1-5 Bid Contents

The Bid will consist of the completed:

Contract	page ii
Attachment B -	Bid Submittal Form and any required documentation
Attachment H -Buy America Certificate	

The completed Bid Submittal Form and all required additional documents shall be placed in a sealed envelope with the enclosed sticker filled out and attached to the outside of the envelope.

1-6 Other Required Submittals

When notified you are the apparent low, responsive, responsible Bidder, the other required attachments and documents shall be submitted:

Attachment D Personnel Inventory Report – Complete, sign and submit.

Attachment E Affidavit and Certificate of Compliance Regarding Equal Employment Opportunity – Complete, sign and submit.

Attachment I Certificate of Lobbying Activities – Complete, sign and submit.

Attachment J Disclosure Form to Report Lobbying and Instruction - Complete as appropriate, sign and submit.

Attachment K Certificate Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions. Complete, sign and submit.

Attachment L Certification Regarding Debarment, Suspension and Other Ineligibility and Voluntary Exclusion – Lower-Tier Covered Transactions. Signed by subcontractors after award of a Contract.

Certificate of Insurance and Endorsements – Have Insurance Agent mail to Buyer.

1-7 Bid Signature

Each Bid shall be signed by the Bidder or the Bidder's authorized representative and include the Bidder's address. If the Bid is made by an individual, the name, signature and post office address must be shown; if made by a partnership or joint venture, the name and post office address of the partnership or joint venture and the signature of at least one of the general partners or authorized joint venture partners must be shown; if made by a corporation, the name of the state under the laws of which the corporation is chartered, the name and post office address of the corporation and the name and title of the authorized Person who signs on behalf of the corporation must be shown.

1-8 Addenda

Each Bid Submittal Form, Attachment B, shall include acknowledgment of receipt and review of all Addenda issued during the bidding period.

1-9 Alterations to Documents

Any addition, limitation or provision made with or attached to the Bid may render it non-responsive and/or irregular and be cause for its rejection. Alteration by erasure or interlineations must be explained or noted over the signature of the Bidder. No oral, telegraphic, telephonic or facsimile bids or modifications will be considered.

1-10 Interpretation of Bid and Contract Documents

No oral interpretations as to the meaning of the ITB will be made to any Bidder. Requests for a written interpretation shall be made in writing and delivered to the County's Procurement and Contract Services Section at the address indicated on the Invitation to Bids advertisement page at least (10) ten calendar days before the date established for submitting Bids. Any interpretation deemed necessary by the County will be in the form of an addendum to the ITB and when issued will be delivered as promptly as is practicable to all parties to whom the ITB has been issued. All Addenda shall become part of the ITB and any subsequently awarded Contract. Bidders shall not rely upon any oral statements or conversations, whether at the pre-bid conference, if any, or otherwise, they may have with County employees or third parties regarding the ITB.

1-11 Examination of Bid and Contract Documents

The submission of a Bid shall constitute an acknowledgment upon which the County may rely that the Bidder has thoroughly examined and is familiar with the ITB, including any Work site identified in the ITB, and has reviewed and inspected all applicable statutes, regulations, ordinances and resolutions addressing or relating to the goods and services to be provided hereunder. The failure or neglect of a Bidder to receive or examine such documents, Work sites, statutes, regulations, ordinances or resolutions shall in no way relieve the Bidder from any obligations with respect to the Bidder's Bid or to any Contract awarded pursuant to this ITB. No claim for additional compensation will be allowed which is based upon a lack of knowledge or misunderstanding of this ITB, Work sites, statutes, regulations, ordinances or resolutions.

1-12 Modification of Bid

A modification of a Bid already received will be considered only if the modification is received prior to the time and date established for submitting Bids. All Bid modifications shall be made in writing, executed and submitted in the same form and manner as the original Bid.

1-13 Bid Withdrawal

Except for claims of error granted by the County, no Bidder may withdraw a Bid after the date and time established for submitting Bids, or before the award and execution of a Contract pursuant to this ITB, unless the award is delayed for a period exceeding the period for bid effectiveness. The County reserves the right to request a Bidder or Bidders to grant an extension of such effective period.

Requests to withdraw a Bid due to error must be submitted in writing along with supporting evidence for such claim including cost breakdown sheets. Requests must be delivered to the County within forty-eight hours after the opening of Bids. The County reserves the right to require the submittal of other Bid records or information as the County may deem necessary to evaluate the request. Any review by the County of a Bid and/or any review of such a claim

of error, including supporting evidence, creates no duty or liability on the County to discover any other Bid error or mistake, and the sole liability for any Bid error or mistake rests with the Bidder.

1-14 Bid Pricing

Prices shall include everything necessary for the prosecution and completion of the Contract including but not limited to furnishing all materials, equipment, supplies, tools, plant and other facilities and all management, supervision, labor and service, except as may be provided otherwise in this ITB. Prices quoted on the Bid Submittal Form shall include all freight charges. Washington State sales/use taxes and federal excise taxes shall not be included in the Bid price. The County will pay any Washington State sales/use taxes applicable to the Contract price or tender an appropriate amount to the Contractor for payment to Washington State. The County is exempt from federal excise taxes. All other government taxes, duties, fees, royalties, assessments and charges shall be included in the Bid price. The Bid shall remain in effect for ninety (90) calendar days after final Bid submittal date and time. In the event of a discrepancy between the unit price and the extended amount for a Bid item, the unit price will govern. The prices, corrected for mathematical errors, shall be used as the amount of the Bid for evaluation and award purposes.

1-15 Conflicts of Interest - Current or Former County Employees

The County seeks to eliminate and avoid actual or perceived conflicts of interest and unethical conduct by current and former County employees. Consistent with this policy, no current or former County employee may Contract with, influence, advocate, advise, or consult with a third party about a County transaction, or assist with the preparation of Bids submitted to the County while employed by the County or within one year after leaving the County's employment, if he/she was substantially involved in determining the Work to be done or process to be followed while a County employee.

All bidders, proposers, vendors, consultants or Contractors who anticipate Contracting with the County must identify at the time of offer, such current or former County employees involved in preparation of bids/proposals or the anticipated performance of the Work or services if awarded the Contract. This information should be included in Attachment G - "Current or Former County Employee Disclosure Form." Failure to identify former County employees involved in this transaction may result in the County's denying or terminating this Contract. In addition, after award, the Contractor is responsible for notifying the County's Project Manager of current or former County employees who may become involved in the Contract any time during the term of the Contract.

1-16 Public Disclosure of Bids

Bids submitted under this ITB shall be considered public documents, and with limited exceptions, Bids which result in the award of Contract will be available for inspection and copying by the public.

If a Bidder considers any portion of its Bid to be protected under the law, the Bidder shall clearly identify each such portion with words such as "CONFIDENTIAL," "PROPRIETARY" or "BUSINESS SECRET." If a request is made for disclosure of such portion, the County will determine whether the material should be made available under the law. If the material is not exempt from public disclosure law, the County will notify the Bidder of the request and allow the Bidder five (5) days to take whatever action is necessary to protect its interests. If the

Bidder fails or neglects to take such action within said period, the County will release the portions of the Bid deemed subject to disclosure. By submitting a Bid, the Bidder assents to the procedure outlined in this paragraph and shall have no claim against the County on account of actions taken under such procedure.

1-17 Protest Procedures

- A. Form of Protest: In order to be considered, a Protest shall be in writing, addressed to the Manager of the King County Procurement and Contract Services Section of the Department of Executive Services, and include:
1. The name, address, and phone number of the Bidder protesting, or the authorized representative of the Bidder;
 2. The ITB Number and Title under which the Protest is submitted;
 3. A detailed description of the specific grounds for protest and any supporting documentation. It is the responsibility of the Protesting Bidder to supplement its Protest with any subsequently discovered documents prior to the Manager's decision;
 4. The specific ruling or relief requested; and
 5. Evidence that all persons with a financial interest in the procurement have been given notice of the Protest or if such persons are unknown, a statement to that effect.
- B. Who May Protest.
1. Protests prior to Bid due date based on Specifications or other terms in the ITB -- any prospective Bidder.
 2. Protests following Bid submittal -- any Bidder submitting a Bid on time.
- C. Time to Protest. Protests based on Specifications or other terms in the ITB document must be received by the County no later than ten (10) Days prior to the date established for submittal of Bids. The County must receive protests based on other circumstances within five (5) Days after the protesting Bidder knows or should have known of the facts and circumstances upon which the Protest is based. In no event shall a Protest be considered if all bids are rejected or after award of the Contract.
- D. Determination of Protest. Upon receipt of a timely written Protest, the Procurement Manager shall investigate the Protest and shall respond in writing to the Protest prior to the award of Contract. Except as provided below, the decision of the Procurement Manager shall be final.
- E. Reconsideration of Manager's Decision. A financially interested Bidder or Contractor may request that a Manager's adverse decision be reviewed by the Director of the King County Business Operations Division ("Director") on a reconsideration basis only. The only justifications for reconsideration are (1) new data, relevant to the underlying grounds for protest and unavailable at the time of

the Protest to the Manager; or (2) the Manager made an error of law or regulation. The following procedures shall be followed for a reconsideration of the Manager's decision:

1. Form of Request for Reconsideration. In order to be considered, a Request for Reconsideration must be filed with the Director in writing and include:
 - a. Name, address, and telephone number of the Person protesting or their authorized representative.
 - b. A copy of the written decision of the Manager.
 - c. Justification for a reconsideration by the Director, including all pertinent facts and law on which the Bidder is relying.
2. Time for filing Request for Reconsideration. The financially interested Bidder must file the Request for Reconsideration no later than five (5) Days of receiving the Procurement Manager's decision.
3. Review of Manager's Decision. Upon receipt of a Request for Reconsideration, the Director or his/her designee shall review (1) the information submitted to and reviewed by the Manager and (2) the decision of the Manager, and shall thereafter issue a final determination regarding the Request for Reconsideration. No other information will be reviewed unless the basis for the request for reconsideration is new data.

F. Failure To Comply. Failure to comply with the procedures set forth herein may render a Protest untimely or inadequate and may result in rejection thereof by the County.

1-18 Supported Employment Program

King County encourages the creation of supported employment programs for developmentally and/or severely disabled individuals. The County itself has such a program and is actively seeking to do business with those Contractors and consultants which share this employment approach. If your firm has such a program, or intends to develop such a program during the life of this Contract, please submit documentation supporting this claim with your bid. If you have questions, or need additional information, please contact the King County ADA Coordinator at (206) 296-7706 or the Business Development and Contract Compliance Section at (206) 205-0700.

1-19 Non-Discrimination and Affirmative Action

PART 1 – NONDISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY

- A. Nondiscrimination in Employment and Provision of Services. During the performance of this Contract, neither the Contractor nor any party Subcontracting under the authority of this Contract shall discriminate nor tolerate harassment on the basis of race, color, sex, religion, nationality, creed, marital status, sexual orientation, age, or the presence of any sensory, mental, or physical disability in the employment or application for employment or in the administration or delivery of services or any other

benefits under this Contract. King County Code Chapter 12.16 is incorporated herein by reference, and such requirements shall apply to this Contract.

- B. Nondiscrimination in Subcontracting Practices. During the solicitation, award and term of this Contract, the Contractor shall not create barriers to open and fair opportunities to participate in County Contracts or to obtain or compete for Contracts and Subcontracts as sources of supplies, equipment, construction and services. In considering offers from and doing business with subcontractors and suppliers, the Contractor shall not discriminate against any Person on the basis of race, color, creed, religion, sex, age, nationality, marital status, sexual orientation or the presence of any mental or physical disability in an otherwise qualified disabled Person.
- C. Compliance with Laws and Regulations. The Contractor shall comply fully with all applicable federal, state and local laws, ordinances, Executive orders and regulations that prohibit discrimination. These laws include, but are not limited to, RCW Chapter 49.60, Titles VI, VII of the Civil Rights Act of 1964, and the Restoration Act of 1987. The Contractor shall further comply fully with any affirmative action requirements set forth in any federal regulations, statutes or rules included or referenced in the Contract documents.
- D. Small Business and Minority and Women Business Enterprises Opportunities - King County encourages the Contractor to utilize small businesses, including Minority-owned and Women-owned Businesses Enterprises ("M/WBEs") in County Contracts. The County encourages the Contractor to use the following voluntary practices to promote open competitive opportunities for small businesses, including M/WBEs:
1. Attending a pre-bid or pre-solicitation conference, if scheduled by the County, to Provide project information and to inform small businesses and other firms of Contracting and Subcontracting opportunities.
 2. Placing all qualified small businesses, attempting to do business in King County, including M/WBEs, on solicitation lists, and providing written notice of Subcontracting opportunities to these firms capable of performing the Work, including without limitation all businesses on any list provided by the County, in sufficient time to allow such businesses to respond to the written solicitations.
 3. Breaking down total requirements into smaller tasks or quantities, where economically feasible, in order to permit maximum participation by small businesses, including M/WBEs.
 4. Establishing delivery schedules, where the requirements of this Contract permit, that encourages participation by small businesses, including M/WBEs.
 5. Providing small businesses, including M/WBEs that express interest with adequate and timely information about plans, Specifications, and requirements of the Contract.
 6. Using the services of available community organizations, Contractor groups, local assistance offices, the County, and other organizations that Provide

assistance in the recruitment and placement of small businesses, including M/WBEs.

7. The Washington State Office of Minority and Women's Business Enterprises (OMWBE) can Provide a list of certified M/WBEs. OMWBE may be reached at (360) 753-9693.

Further, the County encourages small businesses, including M/WBEs, to participate in the following practices to promote open competitive opportunities:

1. Attending a pre-bid or pre-solicitation conference, if scheduled by the County, to receive project information and to inform prime bidders/proposers of Contracting and Subcontracting capabilities.
 2. Requesting placement on solicitation lists, and receipt of written notice of Subcontracting opportunities.
 3. Utilizing the services of available community organizations, Contractor groups, local assistance offices, local publications including newspapers which advertise Contracting opportunities, the County, and other organizations that Provide assistance in the recruitment and placement of small businesses, including M/WBEs.
- E. Equal Employment Opportunity. The Contractor will implement and carry out the obligations in its Affidavit and Certificate of Compliance regarding equal employment opportunity, and all other requirements as set forth in the Affidavit and Certificate of Compliance.
- F. Unfair Employment Practices. King County Code Chapter 12.18 is incorporated by reference as if fully set forth herein and such requirements apply to this Contract. During the performance of this Contract, neither the Contractor nor any party Subcontracting under the authority of this Contract shall engage in unfair employment practices. It is an unfair employment practice for any:
1. Employer or labor organization to discriminate against any Person with respect to referral, hiring, tenure, promotion, terms, conditions, wages or other privileges of employment;
 2. Employment agency or labor organization to discriminate against any Person with respect to membership rights and privileges, admission to or participation in any guidance program, apprenticeship training program, or other occupational training program;
 3. Employer, employment agency, or labor organization to print, circulate, or cause to be printed, published or circulated, any statement, advertisement, or publication relating to employment or membership, or to use any form of application therefore, which indicates any discrimination unless based upon a bona fide occupation qualification;
 4. Employment agency to discriminate against any Person with respect to any reference for employment or assignment to a particular job classification;

5. Employer, employment agency or a labor organization to retaliate against any Person because this Person has opposed any practice forbidden by KCC Chapter 12.18 or because that Person has made a charge, testified or assisted in any manner in any investigation, proceeding or hearing initiated under the provisions of KCC Chapter 12.18;
 6. Publisher, firm, corporation, organization or association printing, publishing or circulating any newspaper, magazine or other written publication to print or cause to be printed or circulated any advertisement with knowledge that the same is in violation of KCC Chapter 12.18.030.C., or to segregate and separately designate advertisements as applying only to men and women unless such discrimination is reasonably necessary to the normal operation of the particular business, enterprise or employment, unless based upon a bona fide occupational qualification; and/or
 7. Employer to prohibit any Person from speaking in a language other than English in the workplace unless:
 - a. the employer can show that requiring that employees speak English at certain times is justified by business necessity; and
 - b. the employer informs employees of the requirement and the consequences of violating the rule.
- G. Record-Keeping Requirements and Site Visits. The Contractor shall maintain, for at least 12 months after completion of all Work under this Contract, the following:
1. Records of employment, employment advertisements, application forms, and other pertinent data, records and information related to employment, applications for employment or the administration or delivery of services or any other benefits under this Contract; and
 2. Records, including written quotes, bids, estimates or proposals submitted to the Contractor by all businesses seeking to participate on this Contract, and any other information necessary to document the actual use of and payments to subcontractors and suppliers in this Contract, including employment records or records relating to the use of Disadvantaged Business Enterprises (DBEs).
- The County may visit, at any time, the site of the Work and the Contractor's office to review the foregoing records. The Contractor shall Provide every assistance requested by the County during such visits. In all other respects, the Contractor shall make the foregoing records available to the County for inspection and copying upon request. If this Contract involves federal funds, the Contractor shall comply with all record keeping requirements set forth in any federal rules, regulations or statutes included or referenced in the Contract documents.
- H. Sanctions for Violations - Any violation of the mandatory requirements of the provisions of this Section shall be a material breach of Contract, for which the Contractor may be subject to damages, withholding payment and any other sanctions provided for by Contract and by applicable law.

PART 2 - REQUIRED SUBMITTALS

A. Required Submittals Prior to Contract Execution. For public works Contracts valued at \$10,000 or more, and for all other Contracts valued at \$25,000 or more, Contractors entering into a Contract or agreement with King County shall, within ten days after the Bidder receives the written notice of selection, submit the following:

1. A Personnel Inventory Report on the form provided by the County.
2. An Affidavit and Certificate of Compliance demonstrating the Contractor's commitment to comply with the provisions of KCC Chapter 12.16.
3. When this Contract is for Public Works Provide, if applicable, a Statement of Compliance with KCC Chapter 12.16 from any labor unions or employee referral agencies which refers workers or employees or provides or supervises apprenticeship or other training programs from whom Contractor obtains employees.
4. Except for Contractors only supplying goods, a 504/ADA Disability Assurance of Compliance on the form provided by the County.
5. Assistance with the requirements of this Section and copies of Chapters 12.16 and 12.18 is available by contacting the King County Business Development and Contract Compliance Division at the address below. Please include the Contract number in all correspondence.

Business Development and Contract Compliance Section
Business Relations and Economic Development
King County Courthouse
Mail Stop: KCC-EX-0402
516 3rd Avenue, Rm. 550
Seattle, WA 98104-3271
Phone: (206) 205-0700
Fax: (206) 205-0719

The County will not execute any agreement or Contract without prior receipt of fully executed forms listed in paragraph A above.

B. Required Submittals During Work when the Contract is for Public Works.

The Contractor shall collect, submit and update the Submittals listed below for itself, its subcontractors and any sub tier subcontractors and suppliers, to the King County's Business Development and Contract Compliance Division. Such subcontractor information shall be submitted prior to the County processing and paying any progress payment that includes such subcontractor Work.

1. An Affidavit and Certificate of Compliance demonstrating subcontractors' commitment to comply with the provisions of KCC Chapter 12.16; a Personnel Inventory Report; and Statement of Compliance.

2. Affidavits of Amounts Paid. Upon completion of all Work and as a condition precedent to final payment, the Contractor shall submit a final Affidavit of Amounts Paid, to the Business Development and Contract Compliance Section. Identify amounts actually paid, and any amounts owed, to each Subcontracting firm and/or supplier for performance under the Contract. Failure to submit such affidavits may result in withholding of payments or the final payment. King County will Provide affidavit forms.

PART 3 – COMPLIANCE WITH SECTION 504 OF THE REHABILITATION ACT OF 1973 AS AMENDED AND THE AMERICAN WITH DISABILITIES ACT OF 1990

Except for Contractors only supplying goods, the Contractor shall complete a Disability Self-Evaluation Questionnaire for all programs and services offered by the Contractor (including any services not subject to this Contract) and shall evaluate its services, programs and employment practices for compliance with Section 504 of the Rehabilitation Act of 1973, as amended ("504"), and the Americans with Disabilities Act of 1990 ("ADA"). The Contractor shall complete a 504/ADA Disability Assurance of Compliance and shall, within ten days after the Bidder receives written notice of selection, submit it to the County. Such Assurance of Compliance will be incorporated herein by this reference.

1-20 Disadvantaged Business Enterprise (DBE) Requirements

- A. Nondiscrimination 49 CFR part 26. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of United States Department of Transportation assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy, as the County deems appropriate.
- B. DBE Program. King County has determined that no DBE goal will be established for this Contract. However, the County requires that the Contractor report any actual DBE participation on this Contract to enable the County to accurately monitor DBE program compliance.
- C. Efforts to Increase DBE Participation. Even though this Contract has no DBE goal, the County still encourages Contractors to pursue opportunities for DBE participation. To that end, Contractors are encouraged to:
 1. Advertise opportunities for subcontractors and suppliers ("subcontractors") in a manner reasonably designed to provide DBEs capable of performing the work with timely notice of such opportunities. All advertisements should include a provision encouraging participation by DBE firms and may be done through general advertisements (e.g., newspapers, journals, etc.) or by soliciting proposals directly from DBEs.
 2. Utilize the services of available minority community organizations, minority consultant groups, local minority assistance offices and organizations that provide assistance in the recruitment and placement of DBEs and other small businesses.

3. Establish delivery schedules, where requirements of the contract allow and encourage participation by DBEs and other small businesses.
 4. Achieve DBE attainment through joint ventures.
- D. DBE Listing. A current list of DBE firms accepted as certified by the Washington State Office of Minority and Women's Business Enterprises (OMWBE) is available from that office at (360) 753-9693 . For purposes of this Contract, a DBE firm must be certified by OMWBE as of the date and time of bid submittal.
- E. Procedure Applicable when DBEs Are Utilized. Concurrent with the use of any DBE subcontractor or supplier the Contractor shall provide notice of such use in writing to the King County Business Development and Contract Compliance Section (BDCC). Upon receipt of said notice and upon request, BDCC shall provide the Contractor with the applicable procedures for counting DBE participation. Assistance with this Section is available from BDCC at (206) 205-0700. Notice referenced herein should be delivered to the following address:

Business Development and Contract Compliance Section
Business Relations and Economic Development
King County Courthouse
Mail Stop: KCC-EX-0402
516 3rd Avenue, Rm. 550
Seattle, WA. 98104-3271
Phone: (206) 205-0700
Fax: (206) 205-0719

SECTION 2 - BID EVALUATION AND CONTRACT AWARD

2-1 Evaluation of Bids

Bids will be evaluated by the County to determine which Bid, if any, should be accepted in the best interest of the County. When Attachment C, "King County Contracting Opportunities Program", is incorporated in the ITB, the determination of lowest responsive, responsible bidder will include the application of the five (5) percent incentive factor for Small Economically Disadvantaged Businesses (SEDB).

A. Responsiveness

The County will consider all the material submitted by the Bidder to determine whether the Bidder's offering is in compliance with the terms and conditions set forth in this ITB.

B. Responsibility

1. The County will consider all the material submitted by the Bidder, and other evidence it may obtain otherwise, to determine whether the Bidder is capable of and has a history of successfully completing Contracts of this type. This may include requiring the Bidder to Provide references from previous Contracts who have been provided the same or equivalent goods or services. References shall include the names and addresses of the parties to whom such goods or services were provided, and the name and phone number of contact persons with such parties.
2. The following elements will be given consideration by the County in determining whether a Bidder is responsible.
 - a. Ability, capacity and skill of the Bidder to perform the Contract or Provide the service required.
 - b. Character, integrity, reputation, judgment and efficiency of the Bidder.
 - c. Whether the Bidder has the financial resources and experience to perform the Contract properly and within the times specified.
 - d. The quality and timeliness of performance by the Bidder on previous Contracts with the County and with other local governments and state and federal agencies, including, but, not limited to, the relative costs, burdens, time and effort necessarily expended by the County and such governments and agencies in securing satisfactory performance and resolving claims.
 - e. Previous and existing compliance by the Bidder with laws relating to public Contracts or services, including, but not limited to equal employment opportunity requirements.

- f. History of the Bidder in filing claims and litigation on prior projects involving the County or on other public or private projects.
- g. Such other information as may be secured having a bearing on the decision to award the Contract.

Bidder shall furnish acceptable evidence of the Bidder's ability to perform, such as firm commitments by Subcontractors, equipment, supplies and facilities, and the Bidder's ability to obtain the necessary personnel, when requested by the County. Refusal to Provide such information when requested will cause the Bid to be rejected.

C. Financial Resources

If requested by the County after Bid opening, the Bidder shall submit proof of adequate financial resources which would be available to the Bidder for the prosecution and completion of the Work as required. When requested, the required financial information shall include:

- 1. audited financial statements such as balance sheets, five (5) statements of income, statements of cash flow and stockholders' equity, for each of the most recently completed fiscal years, including notes to financial statements, independent accountants' reports and annual reports to stockholders;
- 2. documentation of an open line of credit or other arrangement with an established bank under which adequate financing would be available for prosecution and completion of the Work called for hereunder;
- 3. certification by the principal financial officer of or an independent accountant for the Bidder, stating that the Bidder has adequate financial resources for the prosecution and completion of the Work called for hereunder;
- 4. the names, addresses and telephone numbers of at least one contact in the company's principal financial or banking organization and its independent auditor; and
- 5. the Bidder shall supply when requested written authorization for the County to contact the bank and the independent accountant, and written authorization requiring the bank and independent accountant to Provide the information to the County regarding financial capability.

D. Financial Reporting

The Bidder shall Provide a current copy of its Dun and Bradstreet report if requested by the County.

2-2 Collusion

If the County determines that collusion has occurred among Bidders, none of the Bids of the participants in such collusion will be considered. The County's determination shall be final.

2-3 Rejection of Bids

- A. The County reserves the right to reject any Bid for any reason including, but not limited to, the following: any Bid which contains any omission, erasure or irregularity; any Bid which is incomplete, obscure, irregular or lacking necessary detail and specificity; any Bid which has any qualification, addition, limitation or provision attached to the Bid; any Bid which omits a price on any one or more items on the Bid Submittal Form; any Bid in which prices are unbalanced in the opinion of the County; any Bid accompanied by insufficient or irregular Bid security; any Bid from Bidders who (in the sole judgment of the County) lack the qualifications or responsibility necessary to perform the Work; any Bid which is not approved as being compliant with the requirements for equal employment opportunity; any Bid for which a Bidder fails or neglects to complete and submit any qualifications information within the time specified by the County; and any Bid submitted by a Bidder which is not registered or licensed as may be required by the laws of the state of Washington or local government agencies.
- B. The County reserves the right to cancel the ITB in whole or part and at its sole discretion issue a replacement solicitation at a later date.
- C. In consideration for the County's review and evaluation of its Bid, the Bidder waives and releases any claims against the County arising from any rejection of any or all Bids, including any claim for costs incurred by Bidders in the preparation and presentation of Bids submitted in response to this ITB. In addition, Bidders waive the costs of providing additional information requested or cost of modifications made to its internal structure, systems or organizations.
- D. The County reserves the right to waiver informalities and irregularities in bids.
- E. The County shall find non-responsive and reject any Bid which does not comply with the DBE requirements under this ITB, if applicable.

2-4 Procedures When Only One Bid is Received

If the County receives a single responsive, responsible Bid, the County shall have the right, in its sole discretion, to extend the Bid Acceptance period for an additional forty-five (45) days and to conduct a price or cost analysis on such Bid. The Bidder shall promptly Provide all cost or pricing data, documentation and explanation requested by the County to assist in such analysis. By conducting such analysis, the County shall not be obligated to accept the single Bid; the County reserves the right to reject such Bid or any portion thereof.

2-5 Contract Award

The lowest Bid of a responsive, responsible Bidder shall be determined as set forth in this ITB.

The initial identification of the apparent low, responsive responsible Bidder will result in a request for documentation. Within ten (10) calendar days of receipt of the request, the Bidder shall furnish any required performance and payment bond and evidence of any required insurance and perform all other acts required by this ITB as conditions precedent to the formation of the Contract.

Failure by the Bidder to submit satisfactory evidence of a required bond and/or insurance shall result in rejection of the bid as non-responsive and forfeiture of the Bidder's security, if any.

Contract award will occur when King County completes and signs the Agreement of the selected Bidder and issues a Contract Agreement. No other act of the County shall constitute Acceptance of a Bid. The Contract Agreement is a computer generated document with the awarded Contract number, referencing the Agreement, and line items awarded.

The Contractor will receive the Contract Agreement and a copy of the signed Agreement.

SECTION 3 - STANDARD CONTRACTUAL TERMS AND CONDITIONS

3-1 Administration

This Contract is between the County and the Contractor who will be responsible for providing the goods and/or performing the services described herein. The County is not party to defining the division of Work between the Contractor and its Subcontractors, if any, and the Specifications have not been written with this intent.

The Contractor represents that it has or will obtain all personnel and equipment required to perform hereunder. Such personnel shall not be current or former employees of the County without the written approval of the County. Any current or former County employee who is involved, or becomes involved, in the performance of the Contract must be disclosed according to Attachment G; and the County will determine whether conflicts of interest or ethical violations exist under the circumstances.

The Contractor's performance under this Contract may be monitored and reviewed by a Contract administrator appointed by the County. Reports and data required to be provided by the Contractor shall be delivered to the Contract administrator. Questions by the Contractor regarding interpretation of the terms, provisions and requirements of this Contract shall be addressed to the Contract administrator for response.

3-2 Change Orders

The County may, at any time, without notice to the sureties, by written order, make any change in the Work within the scope of this Contract. No oral order or conduct by the County will constitute a Change Order unless confirmed in writing by the County.

If any Change Order causes an increase or decrease in the cost of, or the time required for performance of any part of the Work under this Contract, an equitable adjustment in the Contract price, the delivery schedule, or both shall be made and the Contract modified in writing accordingly. Every Change Order may require a cost/Price Analysis to determine the reasonableness of the proposed change.

The Contractor must assert its right to an adjustment under this clause within five (5) calendar days after receipt of a written Change Order from the County. Upon request from the Contractor, the County may extend the five (5) Day period. The request for equitable adjustment must be in writing and state the general nature and monetary extent of the claim. The County may require additional supporting documents and cost or Price Analysis to determine the validity of the claim.

No claim by the Contractor for an equitable adjustment hereunder will be allowed if asserted after final payment under this Contract. No claim will be allowed for any costs incurred more than ten days before the Contractor gives written notice, as required in this section.

3-3 Cost/Price Analysis

Cost/Price Analysis may be required by the County in the event of a single bid, Change Order, termination, revision to Contract requirements or other circumstances as determined by the Buyer.

3-4 Termination for Convenience/Default/Non-Appropriation

A. Termination for Convenience

The County for its convenience may terminate this Contract, in whole or in part, at any time by written notice sent certified mail, return receipt requested, to the Contractor. After receipt of a Notice of Termination, and except as directed by the Contract administrator, the Contractor shall immediately stop Work as directed in the Notice, and comply with all other requirements in the Notice. The Contractor shall be paid its costs, including necessary and reasonable Contract close-out costs and profit on that portion of the Work satisfactorily performed up to the date of termination as specified in the notice. The Contractor shall promptly submit its request for the termination payment, together with detailed supporting documentation. If the Contractor has any property in its possession belonging to the County, the Contractor will account for the same and dispose of it in the manner the County directs. All termination payment requests are subject to cost/Price Analysis to determine reasonableness and compliance with the Contract, the Contract termination agreement, applicable laws and regulations.

B. Termination for Default

In addition to termination for convenience, if the Contractor does not deliver supplies in accordance with the Contract delivery schedule, or if the Contract is for services and the Contractor fails to perform in the manner called for in the Contract, or if the Contractor fails to comply with any other material provisions of the Contract, the County may terminate this Contract, in whole or in part, for default. Termination shall be effected by serving a Notice of Termination by certified mail (return receipt requested) on the Contractor setting forth the manner in which the Contractor is in default and the effective date of termination; provided that the Contractor shall have ten (10) calendar days to cure the default. The Contractor will only be paid for goods delivered and accepted, or services performed in accordance with the manner of performance set forth in the Contract less any damages to the County caused by or arising from such default. All termination payment requests are subject to cost/Price Analysis to determine reasonableness and compliance with the Contract; the Contract termination agreement, applicable laws and regulations. The termination of this Contract shall in no way relieve the Contractor from any of its obligations under this Contract nor limit the rights and remedies of the County hereunder in any manner.

C. Termination for Non-Appropriation

If expected or actual funding is withdrawn, reduced or limited in any way prior to the termination date set forth in this Contract or in any amendment hereto, the County may, upon written notice to the Contractor, terminate this Contract in whole or in part. Such termination shall be in addition to the County's rights to terminate for convenience or default.

In accordance with King County Code 4.04.040B.6, payment shall not exceed the appropriation for the year in which termination is effected. If the Contract is terminated for non-appropriation:

1. The County will be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination; and
2. The Contractor shall be released from any obligation to Provide further services pursuant to the Contract as are affected by the termination.

Funding under this Contract beyond the current appropriation year is conditional upon the appropriation by the County Council of sufficient funds to support the activities described in this Contract. Should such an appropriation not be approved, the Contract will terminate at the close of the current appropriation year. The appropriation year ends on December 31 of each year.

3-5 Force Majeure

The term "force majeure" shall include, without limitation by the following enumeration: acts of nature, acts of civil or military authorities, fire, accidents, shutdowns for purpose of emergency repairs, strikes and any other industrial, civil or public disturbances, causing the inability to perform the requirements of this Contract. If any party is rendered unable, wholly or in part, by Act of Nature or any other cause not reasonably within such party's control, to perform or comply with any obligation or condition of this Contract, upon giving notice and reasonably full particulars to the other party, such obligation or condition shall be suspended only for the time and to the extent reasonably necessary to restore normal operations. In the event Contractor ceases to be excused pursuant to this provision, then King County shall be entitled to exercise any remedies otherwise provided for in this Contract, including the Termination for default.

3-6 Payment Procedures

A. Invoices

Invoices shall be furnished by the Contractor for goods and/or services, which have been delivered or provided to the County, to:

King County
Accounts Payable M.S. EXC-FI-0875
821 Second Avenue
Seattle, Washington 98104-1598

Important -- The County requires one invoice per purchase order for payment processing. All invoices must include the following information: Contract number, requester's name and phone number, date of invoice, invoice number, purchase order number, prompt payment discount and total price for invoice. For each item purchased indicate quantity, description, part number, model and serial number; where applicable, manufacturers or wholesale list price and discount percentage allowed off the list price, item price and total price for the item and/or for services identify labor category, hourly rates, hours worked, total hours or related fees. Failure to comply with this requirement may delay payment.

B. Payment

Within thirty (30) calendar days after receipt of an invoice, on the basis set forth in Attachment B, the County will pay the Contractor for authorized goods and/or services satisfactorily delivered or performed. Acceptance of such payment by the Contractor shall constitute full compensation for all supervision, labor, supplies, materials, Work, equipment and the use thereof, and for all other necessary expenses, incurred by the Contractor.

C. Prompt Payment Discount

Prompt payments (less than 30 days) are available, if a prompt payment discount was offered by the Contractor. King County may exercise the prompt payment discount if the payment is in the U.S. mail or otherwise given to the Contractor within the number of calendar days offered by the Contractor. The number of calendar days is calculated from the date of Acceptance of the goods or services or from the date a complete invoice is received by Accounts Payable, whichever event occurs last, and the date of payment.

D. Subcontractor Prompt Payment

The Contractor agrees to pay each subcontractor under this Contract for satisfactory performance of its Contract no later than 10 days from the receipt of each payment the Contractor receives from King County. The Contractor agrees further to return retainage payments, if any, to each subcontractor within 30 days after the subcontractor's Work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may only be made for good cause following written approval of King County.

3-7 Washington State Sales Tax

The County will make payment directly to the State for all applicable State sales taxes in case the Contractor is not registered for payment of sales taxes in the State of Washington. If the Contractor is so registered, it shall add the sales tax to each invoice and upon receipt of payment from the County, promptly remit appropriate amounts to the State of Washington.

3-8 Taxes, Licenses, and Certificate Requirements

This Contract and any of the services or supplies provided hereunder are contingent and expressly conditioned upon the ability of the Contractor to Provide the specified service or supplies consistent with federal, state and local law and regulations. If, for any reason, the Contractor's required licenses or certificates are terminated, suspended, revoked or in any manner modified from their status at the time this Contract becomes effective, the Contractor shall notify the County immediately of such condition in writing.

The Contractor shall maintain and be liable for all taxes, fees, licenses and costs as may be required by federal, state and local laws and regulations for the conduct of business by the Contractor and any Subcontractors and shall secure and maintain such licenses and permits as may be required to Provide the services or supplies under this Contract.

3-9 Price Warranty

The Contractor warrants that the prices charged the County do not exceed the prices charged by the Contractor to any other customer purchasing the same product or service in like or similar quantities, and under similar terms and conditions.

3-10 Defective Work, Materials or Services

Prior to final Acceptance hereunder, when and as often as the County determines that the Work, materials or services furnished under the Contract are not fully and completely in accordance with any requirement of the Contract, it may give notice and description of such non-compliance to the Contractor. Within seven (7) calendar days of receiving such written notification, the Contractor must supply the County with a written detailed plan which indicates the time and methods needed to bring the Work, materials or services within acceptable limits of the Specifications. The County may reject or accept this plan at its discretion. In the event this plan is rejected, the Work, materials or services will be deemed not accepted and returned to the Contractor at the Contractor's expense. This procedure to remedy defects is not intended to limit or preclude any other remedies available to the County by law, including those available under the Uniform Commercial Code, Title 62A RCW.

3-11 No Waiver of Warranties and Contract Rights

Conducting of tests and inspections, review of Specifications or plans, payment for a product or service, or Acceptance of a product or service by the County shall not constitute a waiver, modification or exclusion of any express or implied warranty or any right under this Contract or in law.

3-12 Assignment

No party shall assign any interest, obligation or benefit under or in this Contract or transfer any interest in the same, whether by assignment or novation, without prior written consent of the other party. If assignment is approved, this Contract shall be binding upon and inure to the benefit of the successors of the parties. This provision shall not prevent Contractor from pledging any proceeds from this Contract as security to a lender. An assignment shall be accepted by either party upon the posting of all required bonds, securities and the like by the assignee, and the written Agreement by assignee to assume and be responsible for the obligations and liabilities of the Contractor or County, known and unknown, under this Agreement and applicable law.

3-13 Indemnification and Hold Harmless

To the maximum extent permitted by law and except to the extent caused by the sole negligence of the County, the Contractor shall indemnify and hold harmless King County, its officers, officials, agents and employees, from and against any and all suits, claims, actions, losses, costs, penalties and damages of whatsoever kind or nature arising out of, in connection with, or incident to the goods and /or services Provided by or on behalf of the Contractor. In addition, the Contractor shall assume the defense of King County and its officers and employees in all legal or claim proceedings arising out of, in connection with, or incident to such goods and/or services: shall pay all defense expenses, including reasonable attorney's fees, expert fees and costs incurred by King County on account of such litigation or claims. This indemnification obligation shall include, but is not limited to, all claims against King County by an employee or former employee of the Contractor or its

Subcontractors, and the Contractor, by mutual negotiation, expressly waives all immunity and limitation on liability, as respects the County only, under any industrial insurance act, including Title 51 RCW, other Worker's compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim. In the event of litigation between the parties to enforce the rights under this paragraph, reasonable attorney fees shall be allowed to the prevailing party.

3-14 Applicable Law and Forum

Except as hereinafter specifically provided, this Contract shall be governed by and construed according to the laws of the State of Washington, including, but not limited to, the Uniform Commercial Code, Title 62A RCW. Any suit arising here from shall be brought in the King County Superior Court or U.S. District for the Western District of Washington in Seattle; either forum shall have sole and exclusive jurisdiction and venue.

3-15 Conflicts of Interest and Non-Competitive Practices

A. Conflict of Interest

The Contractor, by entering into this Contract with the County to perform or Provide Work, services or materials, has thereby covenanted that it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any interest, which conflicts in any manner or degree with the Work, services or materials required to be performed and/or provided under this Contract and that it shall not employ any Person or agent having any such interest. In the event that the Contractor or its agents, employees or representatives hereafter acquires such a conflict of interest, it shall immediately disclose such interest to the County and take action immediately to eliminate the conflict or to withdraw from this Contract, as the County may require.

B. Contingent Fees and Gratuities

The Contractor, by entering into this Contract with the County to perform or Provide Work, services or material, has thereby covenanted:

1. No Person or selling agency except bona fide employees or designated agents or representatives of the Contractor has been or will be employed or retained to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid; and
2. No gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any of its agents, employees or representatives, to any official, member or employee of the County or other governmental agency with a view toward securing this Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this Contract.

3-16 Disputes, Claims and Appeals

The Contractor shall address questions or claims regarding meaning and intent of the Contract or arising from this Contract in writing to the Buyer, within ten (10) calendar days of the date in which the Contractor knows or should know of the question or claim. The Buyer

will ordinarily respond to the Contractor in writing with a decision, but absent such written response, the question or claim shall be deemed denied upon the tenth Day following receipt by the Buyer.

In the event the Contractor disagrees with any determination or decision of the Buyer, the Contractor may, within five (5) calendar days of the date of such determination or decision, appeal the determination or decision in writing to the Procurement Selection Manager. Such written notice of appeal shall include all documents and other information necessary to substantiate the appeal. The Procurement Selection Manager will review the appeal and transmit a decision or determination in writing. The decision will be considered final. Appeal to the Procurement Selection Manager shall be a condition precedent to litigation hereunder.

All claims, counterclaims, disputes and other matters in question between the County and the Contractor that are not resolved between the Procurement Selection Manager and the Contractor or through alternative dispute resolution will be decided in the Superior Court of King County, Washington, which shall have exclusive jurisdiction and venue over all matters in question between the County and the Contractor. Mediation or arbitration are not mandatory prerequisites to filing a lawsuit.

Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the direction of the Buyer. Failure to comply precisely with the time deadlines under this Subsection as to any claim shall operate as a waiver and release of that claim and an acknowledgment of prejudice to the County.

3-17 Mediation and Arbitration

If a dispute arises out of or relates to this Contract, or the breach thereof, and if said dispute cannot be settled through direct discussions, the parties agree to first endeavor to settle the dispute in an amicable manner by mediation. Thereafter, any unresolved controversy or claim arising out of or relating to this Contract, or breach thereof, may be settled by arbitration, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Nothing in this Subsection precludes any party from seeking relief from King County Superior Court.

3-18 Retention of Records, Audit Access and Proof of Compliance with Contract

A. Retention of Records

1. The Contractor shall maintain books, records and documents of its performance under this Contract in accordance with generally accepted accounting principles. The Contractor shall maintain and retain for a period of not less than six (6) years after the date of final Acceptance of Contract Work and all other pending matters are closed; all financial information, data and records used to prepare and support the Contractor's invoicing for supplies or services and any payments resulting from Change Orders or claims. In addition, the Contractor shall maintain the financial information used in the preparation or support of any Change Orders or claims.
2. The Contractor shall ensure that its Subcontractors and suppliers maintain and retain for no less than six (6) years all records pertaining to the performance by the Subcontractors and suppliers of their portions of the Work under this Contract.

B. Audit Access

1. The County and its authorized representatives and designees shall have access to all records maintained and retained by the Contractor and its Subcontractors for the purpose of inspection, cost/Price Analysis, audit or other reasonable purposes related to this Contract. The County and its representatives and designees shall have access to records and be able to copy such records during the Contractor's normal business hours. The Contractor shall Provide proper facilities for such access, inspection and copying.
2. Audits may be conducted during or after the Contract period for purposes of evaluating claims by or payments to the Contractor and for any other reason deemed appropriate and necessary by the County. Auditors selected and paid for by the County will conduct audits. Audits shall be conducted in accordance with generally accepted auditing standards and/or audit procedure and guidelines of the County. The Contractor shall fully cooperate with the County or its auditor(s) during audits and inspections, and Provide all requested documentation.
3. If an audit is commenced more than sixty (60) days after the date of final Acceptance of Contract Work, the County will give reasonable notice to the Contractor of the date on which the audit will begin.
4. The Contractor shall maintain records relating to the pricing of spare parts. The County will have access to such records for audit purposes.
5. The Contractor may be required to sign a "Certificate of Current Cost or Pricing Data."

C. Proof of Compliance with Contract

The Contractor shall, at any time when requested, submit to the County properly authenticated documents or other satisfactory proofs as to the Contractor's compliance with such requirements.

In addition, the Contractor will permit the County, and if federally funded, the FTA and the Comptroller General of the United States, or a duly authorized representative, to inspect all Work, materials, payrolls and other data and records involving the Contract.

3-19 Other Public Agency Orders

Other federal, state, County and local entities may utilize the terms and conditions established by this Contract if formally requested and approved by the Buyer. The County does not accept any responsibility or involvement in the purchase orders or Contracts issued by other public agencies. A formal cooperative purchasing agreement will be executed.

3-20 Recycled Products Policy

The County promotes the purchase and utilization of recycled material and products where available. Recycled material means material and byproducts which have been recovered or

diverted from solid waste disposal for the purpose of recycling. It does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process. In the event of similar pricing, availability and other factors affecting the solicitation, preference may be given to products containing recycled material.

The Contractor shall, when requested by the Contract administrator, Provide documentation indicating the recycled materials used and their proportion of the total value of the end product. Where recycled materials were available but non-recycled materials were actually used, in whole or in part, the Contractor shall furnish the content by price/volume of recycled and non-recycled material used, and shall furnish an explanation of the reason that recycled materials were not used.

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SECTION 4 - ORDERING, DELIVERY AND SPECIFIC CONTRACTUAL TERMS

4-1 Type of Contract

This ITB may result in the award of one or more Contract agreements. King County will utilize these Contract agreements as indefinite quantities Contracts and issue standard purchase orders to the Contractor citing item number, description, deliver terms and Contract price. The standard purchase orders will be the authorization for the Contractor to perform the service or deliver the goods as directed.

4-2 Execution of the Contract Agreement

The Contract is effective when King County countersigns the Contract Agreement page; the date the Contract is countersigned is the Contract execution date. No other act of the County shall constitute Contract award. The Contract Agreement page is the bilaterally signed page in the Contract depicting the order of precedence of the Contract Documents.

The Contract Agreement may be executed in two counterparts, each of which shall be deemed an original and which shall together constitute one Contract.

4-3 Contract Documents and Precedence

The documents constituting the Contract between the County and the Supply Contractor are intended to be complementary so that what is required by any one of them shall be as binding as if called for by all of them. In the event of any conflicting provisions or requirements within the several parts of the Contract Documents, they shall take precedence as listed on the Contract Agreement, pg. 2.

4-4 Contract Term

This Contract shall commence on the Contract execution date [See Contract Agreement (Sample) pg. 2] and shall continue year by year for five (5) years unless terminated per Section 2-4 Termination for Convenience/Default/Non-Appropriation. During the Term of the Contract, all terms and conditions of this Contract shall remain in effect except those amended by Change Order. An additional Contract time period will be established in the Contract for the option to purchase a third engine generator system.

4-5 Contract Value

The estimated annual value of this Contract is approximately \$160,000 per year. King County will not be limited, restricted or bound by this dollar value, nor shall the County be obligated to purchase any items contained in this Contract.

4-6 Pricing

Pricing shall remain firm for the first year of the contract. Price Change will be effected by the Contractor submitting a new official Bendix Remanufactured Air Brake Parts list to King County and the County accepting that new official Parts list. A new Parts list can be submitted one a year to the Count to take effect on the yearly anniversary date of Contract Award. The discount off List Price will remain the discount percent at time of Contract

Award over the life of this Contract. Requests for any such change are to be made in writing to the Procurement and Contract Services Section. Any agreed-to change shall take effect at the time of the contract extension and shall remain in effect throughout the extension period. The discount percentage shall not decrease but may increase during the duration of the contract on all parts purchased.

King County will not be bound by prices contained in an invoice that are higher than those agreed to herein. If invoice price(s) are found to be higher than what was actually bid on Attachment B, the invoice will be rejected and returned to the Contractor for a correct invoice.

The Contractor shall maintain all pricing records for a minimum of five (5) years or as otherwise required by law for audit purposes. A copy of the manufacturer's current published price list must be attached with your bid.

4-7 Shipping Charges

All prices shall include freight to destination (FOB to the designated delivery point.) Requests for additional compensation for freight charges will be rejected by the County. Shipping shall be paid by the Contractor for the delivery of the Remanufactured Air Brake Parts and for return of the Cores.

4-8 Delivery Requirements

All goods and/or services shall be furnished between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday by the Contractor to the point of delivery designated by King County as soon as it is commercially practicable, but in no event later than the projected delivery date. The Contractor shall notify the County within twenty-four (24) hours of order placement if delivery of any item will not be made by the projected delivery date.

Unless so notified by the Contractor, the County may consider as canceled any order, or any part thereof, that has not been delivered by the projected delivery date to the specified delivery point.

The County reserves the right to obtain necessary goods and/or services from alternative sources upon failure by the Contractor to furnish the goods or services described herein.

Repeated non-delivery or failure to notify the County of an inability to deliver shall be cause for termination of the Contract.

4-9 Packing Slips

Each delivery to the County shall have a packing slip enclosed that identifies the requester, Contract number, requisition number, King County part number, unit price and quantity of each part shipped. If the delivery is a partial shipment, indicate on the packing slip that it is not a complete shipment of that requisition and identify the items not shipped and Provide a projected completion date of the requisition.

If the delivery combines items from more than one requisition, separate packing slips must be included in the shipment for each requisition. A packing slip will not serve as an invoice. A separate invoice must be sent to Accounts Payable.

4-10 Delivery Points

This Contract requires all goods and/or services and supervision necessary to furnish the goods and services as set forth herein to be made to any sites in King County to be determined at the sole discretion of King County.

4-11 Guarantee/Warranty

The Contractor guarantees the goods and services furnished under this Contract will be free from defects in material and workmanship, and will conform with all requirements of this Contract, for a period of one year from date of delivery to the County. The Contractor is responsible for all costs of replacement, including shipping charges, for goods or services found defective within that period, regardless of who actually corrects the defect.

The County shall give written notice of any defect to the Contractor. If the Contractor has not corrected defect within thirty (30) calendar days after receiving the written notice, the County, in its sole discretion, may correct the defect itself. In the case of an emergency where the County believes delay could cause serious injury, loss or damage, the County may waive the written notice and correct the defect. In either case, the County will charge-back the cost for such warranty repair to the Contractor.

The Contractor shall ensure that the warranty requirements of this Contract are enforceable through and against the Contractor's suppliers, vendors, distributors and Subcontractors. The Contractor is responsible for liability and expense caused by any inconsistencies or differences between the warranties extended to the County by the Contractor and those extended to the Contractor by its suppliers, vendors, distributors and Subcontractors. Such inconsistency or difference will not excuse the Contractor's full compliance with its obligations under this Contract.

The Contractor, upon notice of award of the Contract, shall promptly Provide to the County complete copies of all written warranties or guarantees and/or documentation of any other arrangement relating to such warranties or guarantees extended to the Contractor by the Contractor's suppliers, vendors, distributors and Subcontractors covering parts, components, subcomponents and systems procured through this Contract. The Contractor shall cooperate with the County in facilitating warranty related Work by such suppliers, vendors, distributors and Subcontractors.

If the original parts or equipment manufacturer provides a warranty that is greater in scope or duration than the Contractor's warranty to the County, the County shall receive the increased warranty benefits.

The termination of this Contract shall in no way relieve the Contractor from its warranty/guarantee responsibility.

Any goods or services corrected shall be subject to this Subsection to the same extent as the goods or services initially provided.

This guarantee shall be in addition to any other express warranties or any implied warranties or remedies provided by this Contract or by law, and in addition to any other rights or remedies available to the County under this Contract or by law. No provision in this Subsection shall be construed to limit the liability of the Contractor for Work not done in

accordance with the Contract. The liability for such failure to perform shall extend as far as the appropriate periods of limitation provided by law.

The Contractor shall ensure the County receives warranty related Work from its suppliers, distributors, proposers and Subcontractors.

4-12 Hazardous Chemical Communication

In order to comply with WAC 296-62-054, Hazard Communication, the Contractor shall submit with the Bid a Material Safety Data Sheet (MSDS) for all products containing any toxic products that may be harmful to the end user. The MSDS Sheet is to accompany the toxic product(s) to the specified delivery site with each order.

In addition, the MSDS shall be sent to BOTH of the following addresses:

- A. Transit Safety
Attention: Mike Wines
Building A, Mail Stop: SAT-TR-0110
11911 East Marginal Way South
Seattle, WA 98168
Phone: (206) 684-2915
- B. Facilities Maintenance South
Attention: Cathy Johnson
Environmental Compliance
Building C, Mail Stop: SFM-TR-0100
11911 East Marginal Way South
Seattle, WA 98168
Phone: (206) 684-2266

Include the following information in the MSDS:

- A. Chemical Abstract Service (CAS) numbers for every chemical that is listed in the MSDS.
- B. If the product is actually used diluted, the dilution rate should be so stated in the MSDS and the hazards and corresponding personal protection, etc. also be listed.
- C. SARA Title 3 chemicals must be listed with the percentage by weight of the total product.
- D. A statement as to the intended use of the product.

4-13 Industrial and Hazardous Waste

The Contractor shall comply with all applicable local ordinances, state and federal statutes, and supporting rules and regulations governing the discharge of industrial waste to a public sewer, private sewer, or side sewer tributary to the King County sewage system.

Contractor shall handle and dispose of all hazardous wastes in compliance with all applicable local, state and federal laws and regulations, including the Resource Conservation and Recovery Act, the Washington Hazardous Waste Management Act, and applicable rules and

regulations of the Environmental Protection Agency and the Department of Ecology governing the generation, storage, treatment, transportation or disposal of hazardous wastes.

4-14 Product Safety

The Contractor shall not supply any products that contain any of the chemicals listed in Washington State Dangerous Waste Regulations, WAC 173-303-9903. The products must not contain any carcinogens, suspected carcinogens or mutagens. In addition, any product supplied by the Contractor must meet OSHA and any other federal, state and/or local safety requirements.

4-15 Prohibition on Asbestos-Containing Products

Asbestos-containing products shall not be provided to the County under this Contract, unless no practicable alternative for the asbestos-containing product exists and the Contractor obtains the written consent of the County. The Contractor shall notify the County in writing at least 60 days before it plans to supply the County with an asbestos-containing product. The County shall respond to such notification within 30 days of receipt. The Contractor shall comply with applicable state, federal and local labeling and other laws, regulations and ordinances pertaining to asbestos-containing products, including, but not limited to, the State of Washington Industrial Safety and Health Act and the federal Occupational Safety and Health Act.

4-16 Patents, Copyrights and Rights in Data

Any patentable result or materials suitable for copyright arising out of this Contract shall be owned and retained by the County. The County in its sole discretion shall determine whether it is in the public's interest to release or make available any patent or copyright.

The Contractor agrees that the ownership of any plans, drawing, designs, Specifications, computer programs, technical reports, operating manuals, calculations, notes and other Work submitted or which is specified to be delivered under this Contract, whether or not complete (referred to in this Subsection as "Subject Data") shall be vested in the County.

All such Subject Data furnished by the Contractor pursuant to this Contract, other than documents exclusively for internal use by the County, shall carry such notations on the front cover or a title page (or in such case of maps, in the name block) as may be requested by the County. The Contractor shall also place its endorsement on all Contractor-furnished Subject Data. All such identification details shall be subject to approval by the County prior to printing.

The Contractor shall ensure that the substance of foregoing paragraphs are included in each Subcontract for the Work under this Contract.

4-17 Patents and Royalties

The Contractor is responsible for paying all license fees, royalties or the costs of defending claims for the infringement of any patented invention, article, process or method that may be used in performing this Contract or with the completed Work. The Contractor and the Contractor's sureties shall indemnify and hold the County, together with its officers and employees, harmless against any and all demands made for such fees, royalties or claims brought or made by the holder of any invention or patent. Before final payment is made on

the account of this Contract, the Contractor shall, if requested by the County, furnish acceptable proof of a proper release from all such fees or claims.

Should the Contractor, its agent, servants or employees, or any of them be enjoined from furnishing or using any invention, article, material, computer programs or equipment supplied or required to be supplied or used under the Contract, the Contractor shall notify the County in writing and promptly substitute other articles, materials, computer programs or equipment in lieu thereof of equal efficiency, quality, finish, suitability and market value, and be satisfactory in all respects to the County.

4-18 Product Return

King County reserves the right to return to the Contractor, those parts and supplies determined to be surplus and no longer required by the County.

Parts and supplies eligible for return to the Contractor shall have been purchased for inventory or as spares, be unused, and in the same general condition as when received. King County must advise the Contractor in writing of its intention to return any parts and supplies before the Contract closes.

The Contractor is authorized a restocking fee of ____% of the current price for the return of parts and supplies. The Contractor shall, at the County's option, issue a credit for the dollar value of the merchandise returned or refund that dollar amount (less any restocking fee) to the King County Department of Transportation.

This Subsection does not apply to any merchandise made to order for King County.

4-19 Design Defects

The County will declare a design defect in the event that twenty percent (20%) of the items purchased under this Contract fail for the same failure. The County will notify the Contractor of the defect in writing; the Contractor shall Provide a modification, redesign or a plan to correct the defect within (20) twenty calendar days of receipt of the notification.

The warranty period and terms for corrected items shall be the same as for the initial items purchased under this Contract.

In the event that during the warranty period repairs or modifications made necessary by design defects are not completed due to the lack of material or the inability to Provide the proper repair, the extended period of the lack of correction shall not be considered in computing the warranty end date. The same warranty will remain in effect until a correction is implemented. Warranty on items determined to be design defects shall be extended for the time and/or miles of the original warranty. This extended warranty shall begin on the repair/replacement date of the redesign or modification for any corrected failures.

4-20 Use Report

The Contractor shall, if requested, submit to the Procurement and Contract Services Selection Buyer a quarterly report of sales made to King County under this Contract.

The report, in a format acceptable to King County, shall identify the customer for each item purchased, the item description, whether its a Contract or non-Contract item, quantity, price and discount.

4-21 Severability

Any invalidity, in whole or in part, of any provision of this Contract shall not affect the validity of any other of its provisions.

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SECTION 5 - INSURANCE REQUIREMENTS

5-1 Evidence and Cancellation of Insurance

- A. Prior to execution of the Contract, the Contractor shall file with the County certificates of insurance and endorsements from the insurer(s) certifying to the coverage of all insurance required herein. All evidence of insurance must be certified by a properly authorized officer, agent, general agent or qualified representative of the insurer(s) and shall certify the name of the insured, the type and amount of insurance, the location and operations to which the insurance applies, the expiration date, and that King County receives notice at least 45 days prior to the effective date of any cancellation, lapse or material change in the policy.
- B. The Contractor shall, upon demand of King County, deliver to King County all such policies of insurance, and all endorsements and riders, and the receipts for payment of premiums thereon.

Failure to Provide such insurance in a time-frame acceptable to King County shall enable King County to suspend or terminate the Contractor's Work hereunder in accordance with Contract provisions regarding "Termination for Convenience/ Default/ Non-appropriation." Suspension or termination of this Contract shall not relieve the Contractor from its insurance obligations hereunder.

5-2 Insurance Requirements

- A. The Contractor shall obtain and maintain the minimum insurance set forth below. By requiring such minimum insurance, King County shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor under this Contract. The Contractor shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained within this provision shall affect and/or alter the application of any other provision contained with this Contract.

For all coverages:

Each insurance policy shall be written on an "occurrence" form; excepting that insurance for professional liability, errors and omissions when required, may be acceptable on a "claims made" form.

If coverage is approved and purchased on a "claims made" basis, the Contractor warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three years from the date of completion of the Work which is the subject of this Contract.

- B. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. General Liability:

Insurance Services Office form number (CG 00 01 Ed. 11-88) covering COMMERCIAL GENERAL LIABILITY.

2. Automobile Liability:

Insurance Services Office form number (CA 00 01 Ed. 12-90) covering BUSINESS AUTO COVERAGE, symbol 1 "any auto"; or the combination of symbols 2, 8 and 9.

3. Workers' Compensation:

Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this Work by applicable federal or "Other States" State Law.

4. Employers Liability or "Stop Gap":

The protection provided by the Workers Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the General Liability policy.

C. Minimum Limits of Insurance

The Contractor shall maintain limits no less than, for:

1. General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage, and for those policies with aggregate limits, a \$2,000,000 aggregate limit.
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
3. Workers' Compensation: Statutory requirements of the State of residency.
4. Employers Liability Stop Gap: \$1,000,000.

D. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by, the County. The deductible and/or self-insured retention of the policies shall not limit or apply to the Contractor's liability to the County and shall be the sole responsibility of the Contractor.

E. Other Insurance Provisions

The insurance policies required in this Contract are to contain, or be endorsed to contain the following provisions:

1. General Liability Policy:

Use this exact language on the Endorsement form.

- a. The County, its officers, officials, employees and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Contractor in connection with this Contract.
- b. To the extent of the Contractor's negligence, the Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by the County, its officers, officials, employees or agents shall not contribute with the insurance or benefit the Contractor in any way.
- c. The Contractor's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

F. Acceptability of Insurers

Unless otherwise approved by the County,

Insurance is to be placed with insurers with a Bests' rating of no less than A:VIII, or, if not rated with Bests', with minimum surpluses the equivalent of Bests' surplus size VIII.

Professional Liability, Errors and Omissions insurance may be placed with insurers with a Bests' rating of B+:VII. Any exception must be approved by the County.

If at any time of the foregoing policies shall be or become unsatisfactory to the County, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the County, the Contractor shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with the appropriate certificates and endorsements, for approval.

G. Subcontractors

The Contractor shall include all Subcontractors as insureds under its policies, or shall furnish separate certificates of insurance and policy endorsements for each subcontractor. Insurance coverages provided by Subcontractors as evidence of compliance with the insurance requirements of this Contract shall be subject to all of the requirements stated herein.

H. Work Site Safety

The Contractor shall have the "right to control" and bear the sole responsibility for the job site conditions, and job site safety. The Contractor shall comply with all applicable

Federal, State and Local safety regulations governing the job site, employees and Subcontractors. The Contractor shall be responsible for the subcontractor's compliance with these provisions.

J. Endorsements

King County
requires this
Endorsement to
complete the
Contract

Endorsement must be included with insurance. Examples of forms are 2010 11 85 or CG 76 80 10 00.

SECTION 6 - FEDERAL TRANSIT ADMINISTRATION (FTA) REQUIREMENTS

6-1 Applicability and Federal Grant Contract

This procurement is subject to a financial assistance Contract between the County and the U.S. Department of Transportation. The successful Contractor is required to comply with all terms and conditions prescribed in third party Contracts in the grant Contract between the U.S. Department of Transportation and the County.

New federal laws, regulations, policies and administrative practices may be established after the date this Contract is established and may apply to this Contract. To achieve compliance with changing federal requirements, the Contractor agrees to accept all changed requirements that apply to this Contract and require Subcontractors comply with revised requirements as well.

6-2 No Federal Government Obligations to Third Parties

The Contractor agrees that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Contractor or any other party (whether or not a party to this Contract) pertaining to any matter resulting from this Contract.

The Contractor agrees to include the above clause in each Subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

6-3 Disadvantaged Business Enterprise (DBE) Participation

The DBE requirements of 49 CFR Part 26 apply to this Contract. These requirements are described in Section 1, Instructions to Bidders.

6-4 Equal Employment Opportunity

In connection with the execution of this Contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The Contractor shall take affirmative action to ensure that the hiring of applicants and treatment of employees during employment is conducted without regard to their race, color, creed, sex, disability, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Contractor further agrees to insert a similar provision in all Subcontracts, except Subcontracts for standard commercial supplies or raw materials.

The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting officer setting forth the provisions of this non-discrimination clause.

(Authorities: Executive Order 11246, as amended by Executive Order 11375; Title VII of the Civil Rights Act, as amended, 42 USC § 2000e; Federal transit laws at 49 USC § 5332;

section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 USC § 623; section 102 of the Americans with Disabilities Act, as amended, 42 USC §§ 12101 *et seq.*; 29 CFR Part 1630; 41 CFR § 60-1.4).

6-5 Title VI Compliance

The Contractor shall comply with and shall ensure the compliance by all Subcontractors under this Contract with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 USC 2000d) and the regulations of the federal Department of Transportation, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation -- Effectuation of Title VI of the Civil Rights Act," 49 CFR Part 21, (hereinafter "Regulations") as they may be amended from time to time.

During the performance of this Contract, the Contractor, for itself, its assignees and successors-in-interest agrees as follows:

A. Nondiscrimination

The Contractor, with regard to the Work performed by it during the Contract, shall not discriminate on the grounds of race, color, creed, sex, disability, age or national origin in the selection and retention of Subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.

B. Solicitations for Subcontracts, Including Procurements of Materials and Equipment

In all solicitations either by competitive bidding or negotiation made by the Contractor for Work to be performed under a Subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Contract and the regulations relative to nondiscrimination on the grounds of race, color, creed, sex, disability, age or national origin.

C. Information and Reports

The Contractor shall Provide all information and reports required by the regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the County or the Federal Transit Administration (FTA) to be pertinent to ascertain compliance with such regulations, orders and instructions. The Contractor shall maintain all required records for a least three (3) years after the County makes final payment and all other pending matters are closed. Where any information is required and it is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the County or the Federal Transit Administration, as appropriate, and shall set forth efforts made to obtain the information.

D. Sanctions for Noncompliance

In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Contract, the County shall impose such Contract sanctions as it or the FTA may determine to be appropriate, including, but not limited to:

1. Withholding of payments to the Contractor under the Contract until the Contractor complies, and/or,
2. Cancellation, termination or suspension of the Contract, in whole or in part.

E. Incorporation of Provisions

The Contractor shall include the provisions of paragraphs A through E of this section in every Subcontract, including procurements of materials and leases of equipment, unless exempt by the regulations or directives issued pursuant thereto. The Contractor shall take such action with respect to any Subcontract or procurement as the County or the FTA may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that, in the event the Contractor becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the County to enter into such litigation to protect the interests of the County, and in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

6-6 Labor Provisions - Non-Construction Contracts

A. Overtime Requirements

No Contractor or subcontractor Contracting for any part of the Contract Work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any Work week in which he or she is employed on such Work to Work in excess of forty (40) hours in such Work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1.5) times the basic rate of pay for all hours worked in excess of forty (40) hours in such Work week. (29 CFR § 5.5(b)(1)).

B. Violation: Liability for Unpaid Wages: Liquidated Damages

In the event of any violation of the clause set forth in paragraph A of this section, the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of Work done under Contract for the District of Columbia or a territory, to such district or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of paragraph A of this section in the sum of ten (\$10) dollars for each calendar Day on which such individual was required or permitted to Work in excess of the standard Work week of forty (40) hours without payment of the overtime wages required by paragraph A of this section. (29 CFR § 5.5(b)(2)).

C. Withholding for Unpaid Wages and Liquidated Damages

The Department of Transportation or the County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of Work performed by the Contractor or subcontractor under any such Contract or any other federal Contract with the same prime Contractor, or any other federally-assisted Contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in paragraph B of this section. (29 CFR § 5.5(b)(3)).

D. Payrolls and Basic Records

The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the Work and shall preserve them for a period of three (3) years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made and actual wages paid. Further, the records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying or transcription by authorized representatives of the Department of Transportation and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job. (29 CFR § 5.5(c)).

E. Subcontracts

The Contractor or subcontractor shall insert in any Subcontracts the clauses set forth in paragraphs A through E of this section and also a clause requiring the Subcontractors to include these clauses in any lower tier Subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through E of this section. (29 CFR § 5.5(b)(4)).

6-7 Cargo Preference - Use of U.S. Flag Vessels or Air Carriers

In the event that ocean shipment or international air travel is required for any equipment, material or commodities pursuant to this Contract, the Contractor shall:

- A. Utilize privately owned United States-flag commercial vessels to ship at least fifty (50%) percent of the gross tonnage involved, computed separately for dry bulk carriers, dry cargo liners and tankers, whenever shipping any equipment, materials or commodities pursuant to this Contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
- B. Furnish within twenty (20) working days following the date of loading for shipments originating within the United States, or within thirty (30) working days following the date of loading for shipment originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph A of this section, to the County, through the prime

Contractor in the case of subcontractor bills-of-lading, and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590, marked with appropriate identification of the project.

- C. Utilize United States flag air carriers to the extent such carriers Provide the air transportation needed, or accomplish the Contractor's mission. The Contractor agrees to utilize United States flag air carriers even though comparable or a different kind of service can be provided at less cost by a foreign air carrier, a foreign air carrier is preferred by or more convenient for the Contractor, or service by a foreign air carrier can be paid for in excess foreign currency, unless United States flag air carriers decline to accept excess or near excess foreign currencies for transportation payable only out of those monies.
- D. Insert the substance of the provisions of this section in all Subcontracts issued pursuant to this Contract.

(Required by 46 CFR Part 381 and 41 CFR Part 301-3.6).

6-8 Audit and Inspection of Records

In the case of all negotiated Contracts and Contracts for construction, reconstruction or improvement of facilities and equipment, which were entered into under other than competitive bidding procedures, Contractor agrees that the County, the Comptroller General of the United States or any of their duly authorized representatives, shall, for the purpose of audit and examination be permitted to inspect all Work, materials, payrolls, and other data and records with regard to the project, and to audit the books, records and accounts with regard to the project. Further, Contractor agrees to maintain all required records for at least three (3) years after the County makes final payment and all other pending matters are closed.

6-9 Buy America

The Contractor agrees to comply with 49 USC § 5323(j), 49 CFR Part 661, which Provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver.

General waivers are listed in 49 CFR 661.7 and include but are not limited to final assembly in the United States for microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j) (2)(C) and 49 CFR 661.11.

Bids in excess of \$100,000 require Attachment H, "Buy America" Certificate, be completed and submitted to the County with the bid, except those subject to a general waiver. Bids that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier Subcontractors.

6-10 FTA Protest Procedures

Bidders are hereby notified that if this Contract is funded in whole or in part by the Federal Department of Transportation, the Federal Transit Administration (FTA) may entertain a protest that alleges that the County failed to have or follow written protest procedures.

Bidders must file a protest with the FTA not later than 5 working days after the County renders a final decision or 5 working days after the Bidder knows or has reason to know that the County has failed to render a final decision. The protesting party must notify the County if it has filed a protest with the FTA. After 5 days, the County will confirm with FTA that FTA has not received a protest. Protests to the FTA must be filed in accordance with FTA Circular 4220.1D (as periodically updated).

The County will not award a Contract for 5 working days following its decision on a Bid protest or while a protest to the FTA is pending unless the County determines that: (1) the items to be procured are urgently required; (2) delivery of performance will be unduly delayed by failure to make the award promptly; or (3) failure to make prompt award will otherwise cause undue harm to the County or the Federal Government.

6-11 Privacy

Should the Contractor, or any of its Subcontractors, or their employees administer any system of records on behalf of the Federal Government, the Privacy Act of 1974, 5 USC § 552a, imposes information restrictions on the party administering the system of records.

For purposes of the Privacy Act, when the Agreement involves the operation of a system of records on individuals to accomplish a government function, the recipient and any Contractors, third party Contractors, Subcontractors and their employees involved therein are considered to be government employees with respect to the government function. The requirements of the Act, including the civil and criminal penalties for violations of the Act, apply to those individuals involved. Failure to comply with the terms of the Act or this provision of this Contract will make this Contract subject to termination.

The Contractor agrees to include this clause in all Subcontracts awarded under this Contract, which involve the design, development, operation, or maintenance of any system of records on individuals subject to the Act.

6-12 Access Requirements for Individuals with Disabilities

The County and Contractors are required to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 USC §§ 12101, *et seq.*; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794; and 49 USC § 5301(d), and the following regulations and any amendments thereto:

- A. U.S. Department of Transportation regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37;
- B. U.S. Department of Transportation regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities receiving or benefiting from Federal Financial Assistance," 49 CFR Part 27;
- C. U.S. Department of Transportation regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 49 CFR Part 38;
- D. U.S. Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State of Local Government Services," 28 CFR Part 35;

- E. U.S. Department of Justice regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR Part 36;
- F. U.S. General Services Administration regulations, "Accommodations for the Physically Handicapped," 41 CFR Subpart 101-19;
- G. U.S. Equal Employment Opportunity Commission (EEOC) "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630;
- H. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 CFR Part 64, Subpart F; and
- I. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 CFR Part 609.

6-13 Interest of Members or Delegates of Congress

Pursuant to 41 USC § 22, no member of or delegate to the Congress of the United States shall be admitted to any share or part of this Contract or to any benefit arising therefrom.

6-14 Certification Regarding Debarment, Suspension and Other Responsibility Matters

Pursuant to Executive Order 12549 and 12689, "Debarment and Suspension," 31 USC § 6101 note and federal regulations in 49 CFR 29, entities and individuals who are debarred or suspended by the federal government are excluded from obtaining federal assistance funds under this Contract. To assure that such entities and individuals are not involved as participants on this FTA-financed Contract, if the Contract exceeds \$100,000, each Bidder shall complete and submit, as part of its Bid, the certification contained in Attachment K for itself, its principals and its subcontractor(s) for any Subcontract in excess of \$100,000. The inability of a Bidder to Provide a certification in Attachment K will not necessarily result in denial of consideration for Contract award. A Bidder that is unable to Provide a certification must submit a complete explanation attached to the certification form. Failure to submit a certification or explanation shall disqualify the Bidder from participation under this Bid. The County, in conjunction with FTA, will consider the certification or explanation in determining Contract award. No Contract will be awarded to a potential third-party Contractor submitting a conditioned debarment or suspension certification, unless approved by the FTA.

The certification is a material representation of fact upon which reliance is placed in determination of award of Contract. If at any time the Bidder or Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances, it shall immediately Provide written notice to the County. If it is later determined that the Bidder knowingly rendered an erroneous certification, or failed to notify the County immediately of circumstances that made the original certification no longer valid, the County may disqualify the Bidder. If it is later determined that the Contractor knowingly rendered an erroneous certification, or failed to notify the County immediately of circumstances which made the original certification no longer valid, the County may terminate the Contract, in addition to other remedies available including FTA suspension and/or debarment.

6-15 Subcontractors' Certification Regarding Debarment, Suspension or Ineligibility

By submitting a Bid for this Contract, the Bidder agrees that should it be awarded the Contract, it shall not knowingly enter into any Subcontract exceeding \$100,000 with an entity or Person who is debarred, suspended, or who has been declared ineligible from obtaining federal assistance funds; and shall require each subcontractor to complete the certification provided in Attachment L.

Each Subcontract, regardless of tier, shall contain a provision that the subcontractor shall not knowingly enter into any lower tier Subcontract with a Person or entity who is debarred, suspended or declared ineligible from obtaining federal assistance funds, and a provision requiring each lower-tiered subcontractor to Provide the certification set forth in Attachment L.

The Contractor shall require each subcontractor, regardless of tier, to immediately Provide written notice to the Contractor if at any time the subcontractor learns that its, or a lower-tier certification was erroneous when submitted or has become erroneous by reason of changed circumstances. The Contractor may rely upon the certifications of the Subcontractors unless it knows that a certification is erroneous. The Contractor's knowledge and information regarding any subcontractor is not required to exceed that which is normally possessed by a prudent Person in the ordinary course of business.

6-16 Disclosure of Lobbying Activities

Bids in excess of \$100,000 require Attachment I, "Certification Regarding Lobbying," and Attachment J, "Disclosure of Lobbying Activities" (if appropriate), be completed and submitted to the County with the proposal, as required by 49 CFR Part 20, "New Restrictions on Lobbying."

The Contractor certifies that it will not and has not used Federal appropriated funds to pay any Person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Contract, grant or any other award covered by the Byrd Anti-Lobbying Amendment, 31 USC § 1352. The Contractor shall disclose the name of any registrant under the Lobbying Disclosure Act of 1995, codified at 2 USC § 1601 *et seq.*, who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal Contract, grant or award covered by 31 USC § 1352. Such disclosures are to be forwarded to the County.

The Contractor will include the language of this certification in all Subcontract awards at any tier and require that all recipients of Subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

6-17 Anti-Kickback

The County and Contractors are required to comply with the Anti-Kickback Act of 1986, 41 USC §§ 51 *et seq.* Under state and federal law, it is a violation for County employees, bidders, Contractors or Subcontractors to accept or offer any money or benefit as a reward for favorable treatment in connection with the award of a Contract or the purchase of goods or services.

"Kickback" as defined by Federal Acquisition Regulation (FAR) 52.203-7, and 41 USC § 52(2), means any money, fee, commission, credit, gift, gratuity, thing of value, or

compensation of any kind that is provided directly or indirectly to any prime Contractor, prime Contractor employee, subcontractor or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime Contract or in connection with a Subcontract relating to a prime Contract.

6-18 False or Fraudulent Statements or Claims

The Contractor acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the County in connection with this project, the County reserves the right to pursue the procedures and impose on the recipient the penalties of 18 USC § 1001, 31 USC §§ 3729 and 3801 *et seq.*, and/or 49 USC § 5307(n)(1), as may be appropriate. The terms of Department of Transportation regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, are applicable to this project.

The Contractor agrees to include this clause in all Subcontracts awarded under this Contract.

6-19 Conservation

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the State Energy Conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 USC §§ 6321 *et seq.*

The Contractor agrees to include this clause in all Subcontracts awarded under this Contract.

6-20 Air Pollution

The Contractor and suppliers may be required to submit evidence to the Project Manager that the governing air pollution criteria will be met. This evidence and related documents will be retained by the manager for on-site examination by FTA.

6-21 Environmental Requirements

The Contractor agrees to comply with all applicable standards, orders or requirements as follows:

A. Environmental Protection

The Contractor agrees to comply with the applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 USC §§ 4321, *et seq.*, consistent with Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 USC § 4321 note. FTA statutory requirements on environmental matters at 49 USC § 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 42 USC § 4321 *et seq.* and 40 CFR Part 1500 *et seq.*; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 CFR Part 771 and 49 CFR Part 622.

B. Air Quality

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 USC §§ 7401, *et seq.* The Contractor agrees to report each violation to the County and understands and agrees

that the County will, in turn, report each violation as required to assure notification to FTA and the appropriate U.S. Environmental Protection Agency (EPA) Regional Office.

The Contractor agrees to include this clause in each Subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

C. Clean Water

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC §§ 1251 *et seq.* The Contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to FTA and the appropriate Environmental Protection Agency (EPA) Regional Office.

The Contractor agrees to protect underground sources of drinking water consistent with the provisions of the Safe Drinking Water Act of 1974, as amended, 42 USC §§ 300h *et seq.* The Contractor agrees to include these requirements in each Subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

D. Use of Public Lands

The Contractor agrees that no publicly owned land from a park, recreation area, or wildlife or waterfowl refuge of national, state, or local significance as determined by the federal, state or local officials having jurisdiction thereof, or any land from a historic site of national, state, or local significance may be used for the Project unless the FTA makes the specific findings required by 49 USC § 303.

E. Historic Preservation

The Contractor agrees to assist the Federal Government in complying with section 106 of the National Historic Preservation Act, as amended, 16 USC § 470f, Executive Order No. 11593, "Protection and Enhancement of the Cultural Environment," 16 USC § 470 note, and the Archaeological and Historic Preservation Act of 1974, as amended, 16 USC §§ 469a-1 *et seq.* involving historic and archaeological preservation as follows:

1. The Contractor agrees to consult with the State Historic Preservation Officer about investigations to identify properties and resources listed in or eligible for inclusion in the National Register of Historic Places that may be affected by the Project, in accordance with Advisory Council on Historic Preservation regulations, "Protection of Historic and Cultural Properties," 36 CFR Part 800, and notifying FTA of those properties so affected.
2. The Contractor agrees to comply with all federal requirements to avoid or mitigate adverse effects on those historic properties.

F. Mitigation of Adverse Environmental Effects

The Contractor agrees that if the Project should cause adverse environmental effects, the Contractor will take all reasonable steps to minimize those effects in accordance with 49 USC § 5324(b), and all other applicable federal laws and regulations, specifically, the procedures of 23 CFR Part 771 and 49 CFR Part 622.

G. Energy Conservation

The Contractor agrees to comply with the mandatory energy efficiency standards and policies within the applicable state energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 USC §§ 6321, *et seq.*

6-22 Preference for Recycled Products

To the extent practicable and economically feasible, the Contractor agrees to Provide a competitive preference for products and services that conserve natural resources and protect the environment and are energy efficient. Examples of such products may include, but are not limited to, products described in the EPA Guidelines at 40 CFR Part 247, implementing section 6002 of the Resource Conservation and Recovery Act, as amended, 42 USC § 6962, and Executive Order 12873.

6-23 Termination Provisions Required

All Contracts and Subcontracts in excess of \$10,000 shall contain Contractual provisions or conditions that allow for termination for cause and convenience by the County including the manner by which it will be effected and the basis for settlement.

(Required by FTA Circular 4220.1D, § 15.b.).

6-24 Breach Provisions Required

All Contracts in excess of \$100,000 shall contain Contractual provisions or conditions that will allow for administrative, Contractual, or legal remedies in instances where the Contractor violates or breaches the terms of this Contract, including sanctions and penalties as may be appropriate. The Contractor agrees to include this provisional requirement in all Subcontracts in excess of \$100,000 awarded under this Contract.

(Required by FTA Circular 4220.1D, § 15.a.).

6-25 Incorporation of FTA Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by the U.S. Department of Transportation, whether or not expressly set forth in the preceding Contract provisions. All Contractual provisions required by the U.S. Department of Transportation, as set forth in FTA Circular 4220.1D, dated April 15, 1996, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor agrees not to perform any act, fail to perform any act, or refuse to comply with any County requests that would cause the County to be in violation of the FTA terms and conditions.

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SECTION 7 – TECHNICAL SPECIFICATIONS

7-1 General

The contractor shall supply and deliver to the County on an as-needed basis, BENDIX Remanufactured Air Brake Parts , in accordance with the specifications, terms and conditions defined herein during the term of the contract. Bendix Remanufactured Air Brake Parts shall meet or exceed OEM minimum specifications and conform to all applicable industry and safety standards.

7-2 Ordering Requirements

Any and all parts to be furnished under this contract shall be ordered by issuance of purchase orders by King County, Transit Stores Buyers or personnel to the contractor. Such order(s) may be issued at any time during the contract period. All purchase orders are subject to the terms and conditions of this contract. In the event of conflict between a purchase order and this contract, the contract shall control. A purchase order is considered issued when King County receives the confirming fax from the Contractor.

The County stores buyers shall receive order confirmation from the contractor “by line item” via Fax, within twenty four (24) hours of order placement. The contractor shall also give the transit stores buyers the “expected delivery date(s) by line item within four (4) working days after order confirmation. Orders not received by the expected delivery date are subject to complete or partial cancellation by the County without any penalty from the contractor.

7-3 Stocking Requirements

The County reserves the right to return unused parts in new condition with the exception of custom built parts, at a minimum return credit value of eighty five percent (85%) of the contract price. The Contractor shall limit the restocking charge, if any, to a maximum of fifteen percent (15%). King County reserves the right to negotiate with the selected vendor(s) at some point in the future to stock those parts that are considered to have a long lead time for the County.

7-4 Order Placement

King County will write a purchase order for the parts required. The purchase order shall contain the following information:

- A. Contract number
- B. Purchase order number
- C. Name and phone number of requester
- D. Part numbers
- E. Quantity Ordered
- F. Unit and total price for each item (based on discount percentage offered by contractor)
- G. Delivery location
- H. Delivery date (if listed ARO in the price list or if coordinated by phone)

The time for delivery of items will be as stated by the Contractor in the fax sent to the transit stores buyer confirming expected delivery dates for each order, by line item. The confirming fax shall contain the following information:

- A. King County's purchase order number
- B. Date received
- C. Confirmation of quantity ordered
- D. Estimated delivery date at King County Transit Stores

In the event the delivery cannot be made by the time stated on the confirming fax, the Contractor is to notify King County transit stores Buyer(s) as soon as possible. Delivery on back orders shall be limited to a maximum of sixty (60) days or the order may be canceled by the King County Stores Buyer. The contractor shall also provide a manufacturer's certification of compliance with each delivery of parts.

7-5 Quality Control

All brake parts shall meet or exceed the Original Equipment Manufacture (OEM) minimum specifications for new and remanufactured parts, and shall be compatible with the County's current Bendix Remanufactured Air Brake Parts. The Contractor shall provide King county with written certification from the manufacturer that parts meet or exceed OEM specifications.

**King County****ATTACHMENT A****NO BID RESPONSE FORM**

When submitting a "No Bid," mail this completed form to King County Procurement & Contract Services Section, Mailstop EXC-FI-0871, Exchange Building, Eighth Floor, 821 Second Avenue, Seattle, Washington, 98104-1598. Failure to return this form if not submitting a formal Bid may result in your firm being removed from the County's master Bidder's mailing list.

Bid Number: ITB 03—048 PR**Bid Title:** BENDIX REMANUFACTURED AIR BRAKE PARTS☐ Cannot comply with Specifications☐ Cannot meet delivery requirement☐ Do not regularly manufacture or sell the type of commodity involved☐ Other (please specify) _____**Explanation of reason(s) checked:**

Check one of the following:

☐ We **do** ☐ We **do not** desire to be retained on the mailing list for future procurements of this commodity.

Please state below firm name, address and telephone number:

Signature_____
Date_____
Type or Print Name and Title of Signer

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**King County**

**ATTACHMENT B
BID SUBMITTAL FORM**

ITB No: 03-048 PR

Bid Opening Date: September 11, 2003 Time: 2:00 PM PST

Buyer: Paul Russell

Bid Title: **BENDIX REMANUFACTURED AIR BRAKE PARTS**Phone: (206) 684-1054

- A. The undersigned as Bidder declares that we have examined all of the Contract documents herein contained and that we will Contract with King County on the form of agreement provided herewith to do everything necessary for the fulfillment of the Contract at the price and on the terms and conditions herein contained.
- B. We certify that this Bid contains no conditions or modifications to the Bid requirements. We acknowledge that **Addenda numbered _____ to _____** have been delivered to us and have been examined as part of the Contract documents.
- C. If our Bid is accepted, we agree to furnish all applicable sworn statements and the required evidence of insurance and to perform the other acts which are conditions precedent to formation of the Contract within ten (10) calendar days after receiving written notice of award.
- D. We further agree, if our Bid is accepted and a Contract for performance of the Work is entered into with King County, to so plan the Work and to prosecute it with such diligence that all of the Work shall be completed within the times stipulated in the delivery schedule of the purchase order.
- E. This is an indefinite quantities contract. By signing this contract, the County does not guarantee that the contractor will receive any orders for parts. In addition, the County is not giving the contractor the exclusive right and legal obligation to fill all of the government's needs for parts of the kind described in this contract. The County reserves the right to contract with any other entity for the parts described herein.
- F. For Information Purposes Only:
Estimated annual expenditure on rebuilt parts: \$75,000 to \$100,000
- G. Proposal Pricing:
- a) Bidders shall bid on Bendix Remanufactured Air Brake Parts to be determined responsive. **No substitutes for Bendix Remanufactured Air Brake Parts will be accepted.** Bidders submitting alternative manufacturer's products shall be ruled non-responsive to this solicitation.
- b) All Shipping charges for the return of the core and delivery of the remanufactured part must be included in the **% Discount off Bendix List Price, no extra changes will be allowed.** (See Section 4-7 'Shipping Charges' for details on FOB Destination pricing.)

- c)
- d) **NOTE:** The County shall provide the contractor with cores prior to placing orders for remanufactured parts.
- e) **ONLY SUPPLY A SINGLE DISCOUNT IN THE FOLLOWING BOX. The County realizes that there may be multiple discount percentages (based on individual parts in the price list) and the ability of some vendors to get individual quotes from Bendix, but for this bid supply a single discount off List.**
- f) The intent of this Contract is to secure pricing and availability of Bendix remanufactured air brake products over the term of the contract and any contract extensions. The County may purchase any remanufactured brake items listed on the Bendix price list, so the County requires a discount off list price so that when the Bendix price list is updated the Contract discount price can be applied to the published list price, to calculate the price paid by the County. (See price escalation in Section 4-6 Pricing)
- g) See attached Bendix "Suggested List Prices in U.S.A. Currency" Effective January 1, 2003. Your discount must be based off this price sheet. If you supply a CD price sheet the pricing must match this price sheet. Indicate the appropriate **FILE** on the CD (i.e. BW 1465).
- h) See attached sample pricing page form above Price List for correct column to apply your discount. Your pricing should assume that the cores supplied by the County are "Good Cores".

DESCRIPTION	% Discount off Bendix "Exchange List"
Bendix Remanufactured Air Brake Parts	

Bendix #	King County #	Bendix DESCRIPTION	King County DESCRIPTION	EST QTY	5 Yrs*	EST QTY Per Yr
109493X	065624 OR	AD-IP DESIC CART RX	Kit/Inv/Desicant/ Can/ Desicant/ Desic Cart	6	5	1
101100X	101100 OR	E-10 BRK VALVE BASIC	Valve/Inv/Brake Treadle/Air/E-10	150	5	30
104358X	103817 OR	AD-4 DES-CART KIT RX	Kit/Inv/Ad-4 Air Dryer Assembly/Major Maint /2 Unit/Ad-4 Rebuild Kit	1150	5	230
107507X	109198 OR	TF-750 REMFG AIR COMP	Compressor/Inv/Air System	150	5	30
275491X	5953324 OR	VAR GOVERNOR	Valve/Inv/Air Compres- sor/Air/Governor/D-2	150	5	30
289925X	5953337 OR	TF-700 AIR COMP A/M	Compressor/Inv/Engine /Air/B/W	530	5	106
286171X	5963976 OR	E-6 BRK VALVE BASIC	Valve/Inv/Brake Pedal/Application/E-6	50	5	10
107794X	82-10884-000 OR	AD-9 RX DES CART KIT	Kit/Inv/Ad9	3750	5	750
101900X	86512600002 OR	REPLACEMENT KIT	Cartridge/Inv/Air Dryer/Desicant	850	5	170

H. Low Bid determination

- a) The low bidder shall be that bidder providing the greatest discount off the Bendix current price list "Exchange List" column (for remanufactured air brake parts only) that results in the lowest price to the County at time of bid opening.
- b) Bids shall be evaluated based on "Prompt payment discount" on the last page of Attachment B. (See Section 1-15.)
- c) Bidders may provide a current copy of the manufacturer's published parts price list with their bid for evaluation purposes.
- d) The following Table shows the remanufactured air brakes the County has purchased in the past and may not reflect future orders in terms actual items and/or quantity.

I. Inventory:

Contractor shall maintain a minimum level of bus parts in inventory at all times during the contract period for immediate delivery when requested by County stores buyers.

DECLARATION

By signing this Bid, I hereby declare, under penalty of perjury under the laws of the United States that the following statements are true and correct:

1. The undersigned Person(s), firm, association or corporation has (have) not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the project for which this Bid is submitted.
2. By signing the signature page of this Bid, the undersigned business organization is deemed to have signed and agreed to the provisions of this declaration, the terms set forth in this Invitation to Bids and authorized the signature below.
3. In preparing this Bid, the Bidder has not been assisted by any current or former employee of the County whose duties relate now or have related in the past to this Bid or prospective agreement, and who was assisting in other than his or her official public capacity. Neither does such a Person nor any member of his or her immediate family have any financial interest in the outcome of this Bid. Any exceptions to these assurances are described in full detail on a separate page and attached to this Bid Submittal Form.

- * The previous contract lasted 5 years so the estimated quantity was divided by the 5 years to generate the Estimate per year quantity. But all the pieces of a give part number may have been purchased at one time.

Internal Revenue Service (IRS) Reporting Requirements:

Check one: ☐ Corporation; ☐ Partnership; ☐ Sole Proprietor; ☐ Other _____

Identify: State of Incorporation: _____

Provide one: Federal Tax Number _____

Social Security Number: _____

Identify: UBI Number _____

Business License Number: _____

What is the official name registered with the IRS for this number:

Prompt payment discount offered:

Percentage: _____ Days: _____ Standard payment is net 30 days. Evaluation will be at the discounted prices if the time for the discount is not less than 20 days.

Bidder Identification: 1. <input type="checkbox"/> Check if firm submitting Bid is a DBE certified by Washington State Office of Minority and Women's Business Enterprises. 2. <input type="checkbox"/> Check here if the firm submitting this bid is a King County certified Small Economically Disadvantaged Business (SEDB). Certification number: _____	Firm Name: _____ Address: _____ City, State, Zip: _____ Phone Number: _____ Authorized Signature: _____ Printed Name: _____
---	--

Bidders designated contact: Printed Name: _____

Phone number: (____) _____ FAX number: (____) _____

E-mail address: _____

- A. Names, telephone/FAX numbers and email addresses of those responsible for taking orders and initiating delivery

- B. Who King County should contact in case of delivery of irregular or defective parts or failure to deliver within an agreed period.

List Prices

SUGGESTED LIST PRICES - In U.S.A. Currency

Remanufactured

Air Brake Parts

Effective January 1, 2003

(Form BW1465)

Precios de Lista

PRECIOS DE LISTA SUGERIDOS - En Dólares Americanos

Repuestos Remanufacturados

Para Frenos de Aire

Efectivos al 1° de enero de 2003

(Forma BW1465)

CONFIDENTIAL



Remanufactured Suggested List Prices - Air **Precios de Lista Sugeridos para Piezas Remanufacturadas**

*USE THIS
COLUMN*

Part No.	Description	SLC	Core Class	All Values are List				
				Outright Price	Good Core	1 Part Damaged	2 Parts Damaged	Exchange List (See Note 1)
No. de Pieza	Descripcion	SLC	Clase del Casco	Todos los Precios son Lista				
				Precio Completo	Casco Bueno	1 Parte Danada	2 Partes Danadas	Precio de Intercambio (Ver nota 1)

Note 1 - Exchange Price = Remanufactured Exchange Price (Outright Price less Good Core Allowance).

Nota 1 - Precio de Intercambio = Precio de Intercambio para Piezas Remanufacturadas (Precio Completo menos la Bonificacion de Cascos)


King County

ATTACHMENT D Personnel Inventory Report

Legal name of business _____ Telephone No: _____

dba (if applicable) _____

Street address _____ City _____ State _____ Zip Code _____

Submitted by: _____ Title _____ Date _____

IRS Employer Identification Number: _____

Do you have any employees? No ___ Yes ___

If **yes**, list on the Employment Data Chart below the total number of employees for all businesses located in (1) King County. If none, list the total number of employees for all businesses located in (2) Washington State. If none, list the total number of employees for all businesses located in the (3) United States. Indicate which locale (1,2,3) report covers _____. This report covers Business Location(s) in (circle one): [King County, Washington State, Other States] for the Payroll Period ending (Month/Day/Year):_____.

Do any of your employees belong to a union and/or do you use an employee referral agency?

No ___ Yes ___

 If **yes**, list the unions and/or employee referral agencies with whom you have agreements: _____

If you expect to do more than \$10,000 worth of public Work (construction) or, more than \$25,000 worth of business with King County, the unions or employee referral agencies must submit a statement of compliance with King County Code Chapter 12.16.

Job Category	White		African American		Asian		Native American		Hispanic		Disabled		Minority Subtotal		Disabled Subtotal	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Managerial																
Professional																
Technical																
Clerical																
Sales																
Service																
Labor																
On-Job Trainees																
Apprentice																
Skilled Craft*																
Subtotal																

* Journey worker: List by classification on reverse, e.g., carpenter, plumber, etc.

Total number of employees reported above: _____ If no employees, write "0."



King County

Personnel Inventory Report

SUPPLEMENTAL FORM

Use this form as necessary to report the total Work force.

Legal name of business _____ Telephone _____

Submitted by: _____

Title

Date

[illegible]

Contact the King County Procurement and Contract Services Section at (206) 684-1681 or the King County Business Development and Contract Compliance Section (206) 205-0700 if you have any questions concerning completion of this form.



King County

ATTACHMENT E

Affidavit and Certificate of Compliance
with King County Code Chapter 12.16, Discrimination and Affirmative Action
in Employment by Contractors, Subcontractors and Vendors

The undersigned, being first duly sworn, on oath states, s/he is authorized by the Contractor, and on the Contractor's behalf, affirms and certifies as follows:

Definitions: "Contractor" shall mean any Contractor, vendor or Contractor who supplies goods and/or services. "Contract" shall mean any Contract, purchase order or agreement with King County Government, hereinafter called the COUNTY.

- A.** Contractor recognizes that discrimination in employment is prohibited by federal, state and local laws. Contractor recognizes that in addition to refraining from discrimination, affirmative action is required to Provide equal employment opportunity. Contractor further recognizes that this Affidavit establishes minimum requirements for affirmative action and fair employment practices and implements the basic nondiscrimination provisions of the general Contract Specifications as applied to service, Contractor, and vendor Contracts exceeding \$25,000, or public Work Contracts exceeding \$10,000. Contractor herein agrees that this Affidavit is incorporated as an addendum to its general Contract, and recognizes that failure to comply with these requirements may constitute grounds for application of sanctions as set forth in the general Specifications, King County Code Chapter 12.16 ("Chapter") and this Affidavit. PROVIDED FURTHER, that in lieu of this Affidavit, the Executive may accept a statement pledging adherence to an existing Contractor affirmative action plan where the provisions of the plan are found by the Executive to substantially fulfill the requirements of the Chapter.
- B.** Contractor shall give notice to their supervisors and employees of the requirements for affirmative action to be undertaken prior to the commencement of Work.
- C.** This Person has been designated to represent the Contractor and to be responsible for securing compliance with and for reporting on the affirmative actions taken:
- D.** Contractor will cooperate fully the M/WBE and Contract Compliance Division and appropriate County agents while making every reasonable "good faith" effort to comply with the affirmative action and nondiscrimination requirements set forth in this Affidavit and in King County Code Chapter 12.16.
- E. Reports:** The Contractor agrees to complete and submit as required such additional reports and records that may be necessary to determine compliance with the Affidavit and to confer with the County Compliance Officer at such times as the County shall deem necessary. The information required by the Chapter includes but is not limited to the following reports and records:
- 1. Personnel Inventory Report:** This report shall include a breakdown of the employer workforce showing race, sex and handicapped and other minority data.

- 2. Monthly Utilization Report:** This report shall apply to construction Contractors and Subcontractors and shall Provide the number of hours of employment for all employees, including minority, women and disabled employees by craft and category.
- 3. Statement from Union or Worker Referral Agency:** This statement affirms that the signee's organization has no practices and policies which discriminate on the basis of race, color, creed, religion, sex, age, marital status, sexual orientation, nationality or the presence of sensory, mental or physical disability.

The information required in this section shall be submitted on forms provided by the County unless otherwise specified.

- F. Subcontractors:** For public works projects and Contracts of ten thousand dollars (\$10,000) or more, and for all other Contracts and agreements of twenty-five thousand (\$25,000) dollars or more, the prime Contractor shall be required to submit to the County, along with its qualifying documents under the Chapter, employment profiles, Affidavits and Certificates of Compliance, Reports and Union Statements from its Subcontractors in the same manner as these are required of the prime Contractor. Reporting requirements of the prime Contractor during the Contract period will apply equally to all Subcontractors.
- G. Employment Goals for Minorities, Women and Persons with Disabilities:** No specific levels of utilization of minorities and women in the workforce of the Contractor shall be required, and the Contractor is not required to grant any preferential treatment on the basis of race, sex, color, ethnicity or national origin in its employment practices. Notwithstanding the foregoing, any affirmative action requirements set forth in any federal regulations, statutes or rules included or referenced in the Contract documents shall continue to apply.
- H. Affirmative Action Measures:** Contractor agrees to implement and/or maintain reasonable good faith efforts to comply with King County Code Chapter 12.16. The evaluation of a Contractor's compliance with the Chapter shall be based upon the Contractor's effort to achieve maximum results from its affirmative action measures. The CONTRACTOR shall document these efforts and shall implement affirmative action steps at least as extensive as the following:
- 1. Policy Dissemination:** Internal and external dissemination of the Contractor's equal employment opportunity policy; posting of nondiscrimination policies and of the requirement of the Chapter on bulletin boards clearly visible to all employees; notification to each subcontractor, labor union or representative of workers with which there is a

collective bargaining agreement or other Contract, Subcontract, or understanding of the Contractor's commitments under the Chapter. Inclusion of the equal opportunity policy in advertising in the news media and elsewhere.

2. **Recruiting:** Adopt and implement recruitment procedures designed to increase the representation of women, minorities and persons with disabilities in the pool of applicants for employment: including, but not limited to establishing and maintaining a current list of minority, women and disabled recruitment sources, providing these sources written notification of employment opportunities and advertising vacant positions in newspapers and periodicals which have minority, women and/or disabled readership.
3. **Self-Assessment and Test Validation:** Review of all employment policies and procedures, including tests, recruitment, hiring and training practices and policies, performance evaluations, seniority policies and practices, job classifications and job assignments to assure that they do not discriminate against, or have a discriminatory impact on, minorities, women and persons with disabilities and validate all tests and other selection requirements where there is an obligation to do so under state or federal law.
4. **Record Referrals:** Maintain a current file of applications of each minority, women and persons with disabilities who are applicants or referrals for employment indicating what action was taken with respect to each such individual and the reasons therefor. Contact these people when an opening exists for which they may be qualified. Names may be removed from the file after twelve months have elapsed from their last application or referral.
5. **Notice to Unions:** Provide notice to labor unions of the Contractor's nondiscrimination and affirmative action obligations pursuant to King County Code Chapter 12.16. Contractors shall also notify the M/WBE and Contract Compliance Division if labor unions fail to comply with the nondiscrimination or affirmative provisions.
6. **Supervisors:** Ensure that all supervisory personnel understand and are directed to adhere to and implement the nondiscrimination and affirmative action obligations of the Contractor under King County Code Chapter 12.16. Such direction shall include, but not be limited to, adherence to, and achievement of, affirmative action policies in performance appraisals of supervisory personnel.
7. **Employee Training:** When reasonable, develop on-the-job training opportunities which expressly include minorities, women, and persons with disabilities and sponsor and/or utilize, training/educational opportunities for the advancement of women, minorities and persons with disabilities employed by the Contractor, subject to Acceptance by the County.
8. **Responsible Person:** Designate an employee who shall have the responsibility for implementation of the Contractor's affirmative action measures.

9. **Progress Reporting:** Prepare as part of the affirmative action plan an analysis and report on the progress made toward eliminating the underrepresentation of minorities, women, and persons with disabilities in the Contractor's workforce on an annual basis.

- I. During the performance of this Contract, neither the Contractor nor any party Subcontracting under the authority of this Contract shall discriminate nor tolerate harassment on the basis of race, color, sex, religion, nationality, creed, marital status, sexual orientation, age, or the presence of any sensory, mental or physical disability in the employment or application for employment or in the administration or delivery of services or any other benefits under this Contract.
- J. Contractor agrees to Provide reasonable access upon request to the premises of all places of business and employment, relative to Work undertaken in this Contract, and to records, files, information and employees in connection therewith, to the M/WBE and Contract Compliance Division or agent for purposes of reviewing compliance with the provisions of this Affidavit and agrees to cooperate in any compliance review.
- K. Should the M/WBE and Contract Compliance Division find, upon complaint investigation or review, the Contractor not to be in good faith compliance with the provisions contained in this Affidavit, it shall notify the County and Contractor in writing of the finding fully describing the basis of non-compliance. Contractor may request withdrawal of such notice of noncompliance at such time as the compliance office has notified in writing the Contractor and the County that the noncompliance has been resolved.
- L. The Contractor agrees that any violation of any term of this Affidavit, including reporting requirements, shall be deemed a violation of King County Code Chapter 12.16. Any such violation shall be further deemed a breach of a material provision of the Contract between the County and the Contractor. Such breach may be grounds for implementation of any sanctions provided for in the Chapter, including but not limited to, cancellation, termination or suspension, in whole or part, of the Contractor by the County; liquidated damages; or disqualification of the Contractor PROVIDED, that the implementation of any sanctions is subject to the notice and hearing provisions of King County Code Chapter 12.16.110.

Contractor: _____
Company Name Street Address City State Zip

I have read and understood the foregoing; and am authorized on behalf of the Contractor to agree to the terms and conditions of this and Affidavit and Certificate of Compliance and therefore, execute the same.

Authorized Signer: _____
Name (type or print) Title Phone

Signature: _____

VALID ONLY IF NOTARIZED

SUBSCRIBED AND SWORN TO BEFORE ME THIS _____ DAY OF _____, 2003.

(Signature of notary public)

(Printed name of notary public)

Notary Public in and of the state of _____

My appointment expires:

This Page Blank

**King County**

ATTACHMENT H
BUY AMERICA CERTIFICATE
CONTRACT NO. 242936

Certificate Of Compliance With Section 165(a)

The vendor hereby certifies that it **will** comply with the requirements of Section 165(a) of the Surface Transportation Assistance Act of 1982, as amended, and the regulations in 49 CFR Part 661.

Date: _____

Company Name: _____

Signature: _____

Title: _____

OR

Certificate Of Noncompliance With Section 165(a)

The vendor hereby certifies that it **cannot** comply with the requirements of Section 165(a) of the Surface Transportation Assistance Act of 1982, as amended, but it may qualify for an exception to the requirement pursuant to Section 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act of 1982 and regulations in 49 CFR Part 661.7.

Date: _____

Company Name: _____

Signature: _____

Title: _____

It is important to remember that this Bid is funded in part by the FEDERAL TRANSIT ADMINISTRATION (FTA). In accordance with FTA requirements, each vendor shall complete this Attachment H and submit it to the County with and as a part of their Bid.

Par. 661.5 GENERAL REQUIREMENTS FOR STEEL AND MANUFACTURED PRODUCTS.

- [a] Except as provided in Part 661 no funds may be obligated by FTA for a grantee project unless all steel and manufactured products used in the project are produced in the United States.
- [b] All steel manufacturing processes must take place in United States, except metallurgical processes involving refine of steel additives.
- [c] The steel requirements apply to all steel items including, but not limited to, structural steel, running rail and contact rail.
- [d] For a manufactured product to be considered produced in the United States:
 - [1] All of the manufacturing processes for the product must take place in the United States; and
 - [2] All items or material used in the product must be of United States origin.

From: Carol Beaul [cb@intellitrade.com]
Sent: Tuesday, August 19, 2003 9:02 AM
To: paul.russell@metrokc.gov
Cc: William.Eggerichs@bendix.com; Larry.Leimbach@bendix.com
Subject: Buy America for Bendix

Paul,

As discussed, this is a follow-up to our conversation. We are international trade consultants who handle the regulatory issues such as Buy America for Bendix.

With respect to the product, we can not provide the Buy America certificate due to the place they are manufactured and/or the fact that they are remans. You, however, can try to get a waiver.

Hope this helps.

Carol

Paul,

As we discussed, you are looking for Buy America on a number of parts from Bendix (list below). There are two problems with this.

First a number of these parts are made in Mexico so do not qualify for Buy America.
Second, the parts are remanufactured product and, thus, it is difficult to impossible to prove the content requirements for Buy America.

The reason is that these are manufactured from old parts that are returned, knocked down and rebuild into reman ones. In the case of remans you can not prove the origin of the old part that is returned and thus can not consider this as U.S. content. Further in most cases the labor and overhead added for the reman function do not equal 60%. Thus, it is very difficult to prove the 60% content requirement.

I trust this explains the issue and why we can not qualify the product under Buy America.

Carol

Bendix Number	Description	Source Plant	
109493	Reman Desiccant Cartridge	Acuna	Mexico
101100	Reman E-10 Brake Valve	Acuna	
104358	Reman Desiccant Cartridge Kit	Acuna	
107507	Reman Compressor	Huntington	Indiana
275491	Reman D-2 Governor	Acuna	
289925	Reman Compressor	Huntington	
286171	Reman E-6 Brake Valve	Acuna	
107794	Reman Desiccant Cartridge Kit	Acuna	
101900	Reman Cartridge Kit	Acuna	

**King County**

ATTACHMENT I
CERTIFICATE OF LOBBYING ACTIVITIES
CONTRACT NO. 242936

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any Person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, or officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal Contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal Contract, grant, loan or cooperative agreement.
- (2) If any funds other than federally appropriated funds have been paid or will be paid to any Person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this federal Contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," to the Contract administrator.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-Contracts, sub-grants and Contracts under grants, loans and cooperative agreements) and that all recipients of Subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by § 1352, Title 31, U.S. Code. Any Person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Name of Firm: _____

Authorized Signature: _____

Printed Name: _____

Title: _____

Date: _____



King County

ATTACHMENT J
DISCLOSURE FORM TO REPORT LOBBYING

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S. C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: <input type="checkbox"/> a. Contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance		2. Status of Federal Action: <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award		3. Report Type: <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change For material change only: year_____ quarter_____ Date of last report:_____	
4. Name and Address of Reporting Entity: <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known: Congressional District, if known: _____			5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known: _____		
6. Federal Department/Agency:			7. Federal Program Name/Description: _____ CFDA Number, if applicable: _____		
8. Federal Action Number, if known:			9. Award Amount, if known: \$		
10. a. Name and Address of Lobbying Entity (If individual, last name, first name, MI):			b. Individuals Performing Services (including address if different from No. 10a) (Last name, First name, MI):		
11. Amount of Payment (check all that apply):			13. Type of Payment (check all that apply): <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other; specify: _____		
12. Form of Payment (check all that apply): <input type="checkbox"/> a. cash <input type="checkbox"/> b. in kind; specify: nature _____ value _____					
14. Brief Description of Services Performed or to be Performed and date(s) of service, including officer(s), employee(s), or member(s) contacted, for payment indicated in Item 11: (Attach Continuation Sheet(s) SF-LLL-A, if necessary)					
15. Continuation Sheet(s) SF-LLL-A attached: <input type="checkbox"/> Yes <input type="checkbox"/> No					

16. Information requested through this form is authorized by title 31 USC § 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 USC § 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any Person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature: _____

Print
Name: _____

Title: _____

Telephone No: _____

Date: _____



King County

ATTACHMENT J

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime federal recipient, at the initiation or receipt of a covered federal action, or a material change to a previous filing to title 31 USC § 1352. The filing of a form is required for each payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with a covered federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subaward of the prime is the 1st tier. Subawards include but are not limited to Subcontracts, subgrants and Contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, state and zip code of the prime federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the federal program name or description for the covered federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate federal identifying number available for the federal action identified in item 1 - (e.g., Request for Proposal (RFP) number, Invitation to Bid (ITB) number, grant announcement number, the Contract, grant, or loan award number, the application/proposal control number assigned by the federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered federal action where there has been an award or loan commitment by the federal agency, enter the federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered federal action.
 (b) Enter the full name, of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the amount of box(es). Check all boxes that apply. If payment is made through in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with federal officials. Identify the federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not an SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

**King County****ATTACHMENT K****CERTIFICATION REGARDING DEBARMENT, SUSPENSION
AND OTHER RESPONSIBILITY MATTERS -
PRIMARY COVERED TRANSACTIONS**

Federal Transit Administration (FTA)

The prospective Primary Participant (potential Contractor for a major third-party Contract), _____ certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
2. Have not within a three (3) year period preceding this Bid been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or Contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in Paragraph 2 of this certification; and
4. Have not within a three (3) year period preceding this Bid had one or more public transactions (federal, state or local) terminated for cause or default.

[If the primary participant (applicant for an FTA grant, or cooperative agreement or potential third-party Contractor) is unable to certify to any of the statements in this certification, the participant shall attach an explanation to this certification.]

THE PRIMARY PARTICIPANT (POTENTIAL CONTRACTOR FOR A MAJOR THIRD-PARTY CONTRACT) CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 USC SECTIONS 3801, *ET SEQ.*, ARE APPLICABLE THERETO.

Name of Firm: _____

Authorized Signature: _____

Printed Name: _____

Title: _____

Date: _____

**King County**

ATTACHMENT L
CONTRACT NO: 242936

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,
AND OTHER INELIGIBILITY AND VOLUNTARY EXCLUSION –
LOWER-TIER COVERED TRANSACTIONS**

(This Attachment may be completed and submitted to the Buyer after award of Contract.)

The Lower-Tier Participant (potential sub-grantee or sub-recipient under a Federal Transit Administration (FTA) project, potential third-party Contractor, or potential subcontractor under a major third-party Contract), _____ certifies, by submission of this Bid, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

The Lower-Tier Participant will not knowingly enter into any lower-tier covered transaction with a Person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

The prospective Lower-Tier Participant agrees by submitting this proposal that it will include this requirement in all lower-tier covered transactions and in all solicitations for lower-tier covered transactions.

If the Lower-Tier Participant (potential sub-grantee or sub-recipient under an FTA project, potential third-party Contractor, or potential subcontractor under a major third party Contract) is unable to certify to any of the statements in this certification, such participant shall attach an explanation to this Bid.

THE LOWER-TIER PARTICIPANT (POTENTIAL SUB-GRANTEE OR SUB-AGREEMENT UNDER AN FTA PROJECT, POTENTIAL THIRD-PARTY CONTRACTOR, OR POTENTIAL SUBCONTRACTOR UNDER A MAJOR THIRD-PARTY CONTRACT) CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTAND THAT THE PROVISIONS OF 31 USC §§ 3801, *ET SEQ.*, ARE APPLICABLE THERETO.

Name of Firm: _____

Authorized Signature: _____

Printed Name: _____

Title: _____

Date: _____

**King County****ENCLOSURE****BID OPENING LABEL**

Complete the form below (or reasonable facsimile) and affix to the exterior lower left hand corner of the submission envelope(s) or box(es).

	Urgent-Sealed Bid Enclosed	
	Do not Delay - Deliver	
	Immediately	
	Bid Number:	<input type="text" value="03-048 PR"/>
Bid Title:	<input type="text" value="Bendix Remanufactured Air Brake Parts"/>	
Opening Date:	<input type="text"/>	
Firm Name:	<input type="text"/>	
King County Procurement Exchange Building, 8th Floor		
& Contract Services Section 821 Second Avenue		
Finance & Business Operations Seattle, WA 98104-1598		
MS EXC-FI-0862		